UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

LISA MENNINGER,

Plaintiff,

v.

PPD DEVELOPMENT, L.P.,

Defendant.

Civil Action No.
1:19-cv-11441-LTS

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 10

Friday, March 31, 2023
8:51 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufp@gmail.com

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MISCELLANEOUS

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

So one thing, Mr. Hannon filed a request for a supplement or a change to page 24. I revised page 24. So let me just tell you how I've revised it. I've essentially done three things. I've -- Mr. Hannon, one thing he asked me to do, was add basically -- I had three adverse actions, he said make it five and the wording on some of them changed slightly. So I did that, I took his five. I thought that was fair. But just for the record, I think that at summary -- none of these were precluded by summary judgment. I think the trial record supports it. I'm not saying that I do find it or anything, it's just for the jury to decide. So I think that's reasonable. So I did that.

I deleted the paragraph at the end that you wanted me to delete, Mr. Hannon, but in my wording of the change to the first paragraph, I made a few other adjustments, in light of -- I'll just read it to you and we're printing a copy so you'll have them shortly.

So the first paragraph, the beginning of Element 2 on page four, the first part of it, it reads this way.

Second -- I'll speed read a little, it doesn't change. "Dr. Menninger must prove she suffered a material adverse action. For the purposes of this retaliation claim, Dr. Menninger alleges that the adverse action was comprised of one or more of the following alleged actions."

Then it lists the five as Mr. -- six, sorry, as Mr. Hannon proposed them. I'm not going to read that for you, because you have what he filed, right?

MS. MANDEL: (Nods head.)

THE COURT: All right. Then the next sentence says, "For this element, you must determine whether plaintiff has met her burden to prove by a preponderance of the evidence both that, (a), one or more of these alleged acts occurred, and (b), if so, whether the proven acts amounted to an adverse action, either individually or collectively."

MR. CURRAN: No objection.

MR. HANNON: Good here.

THE COURT: Okay. All right. Fine.

All right. Copies?

THE LAW CLERK: Yeah.

THE COURT: So if you can just give them to Kellyann.

THE DEPUTY CLERK: I can pass them out.

THE COURT: It's a whole new copy, another tree down, but it only changes on page 24.

MR. HANNON: I've got one issue to raise.

THE COURT: Okay.

MR. HANNON: One more question to run by you.

THE COURT: Yeah.

MR. HANNON: So during my closing, what I'd like to tell the jury, with respect to the exhibits, is given the number of them and the lack of a cohesive organization that, if they're having trouble finding something, that they are permitted to ask a question, in terms of where a particular document is located. I would tell them that answering those questions is a bit of a hassle. It would be best if they kind of made a full, comprehensive list, but that's something that I would like to mention in my closing.

THE COURT: Do we -- yes?

MS. MANDEL: Offhand, it strikes me as something that might be more appropriate to come from the bench, instead of from one of us during closing. It's sort of a neutral statement.

THE COURT: Let me first -- Kellyann, do they get the -- they'll get a list, right?

THE DEPUTY CLERK: They should, yes.

THE COURT: That has the description.

THE DEPUTY CLERK: Right.

THE COURT: And then that will be on the CD, too? I mean, on the computer screen or just on paper?

THE DEPUTY CLERK: It might be just on paper.

THE COURT: Okay.

MR. HANNON: It's like 450 documents, though. It's going to be like finding a needle in a haystack.

THE COURT: So I think that's -- I'm happy to tell them that. I don't mind telling them that. I mean -- in the exhibits, you know, and that I'm certainly going to tell them, even though it's not in the instructions, that part -- I try not to ad lib generally from the written instructions, but like I'm going to tell them there's -- I'm going to explain how the CD thing works, not in detail, but they have it and -- they're not going to have paper copies, correct?

MR. HANNON: Right.

MS. MANDEL: Correct.

THE COURT: So the exhibits will only be on there and they can -- I don't -- are you objecting to him saying it, or just -- I will say that. I understand you to be saying that you'd like me to say it. I will say to them that they have this list, and I'm not going to invite questions. I don't think I would -- just my own preference, but mostly because it is a hassle, but I'm going to tell them about the process for a question, and I'm going to tell them they write it out, and I'll tell them that it sometimes takes a few minutes, because we gather everyone, and I talk to all of you before I answer any questions.

And so, one, I will say something like that. No problem. I understand that's what you're requesting of me, right?

MS. MANDEL: Yes.

THE COURT: All right. Are you objecting to Mr. Hannon saying it or not?

MS. MANDEL: I suppose I don't object to that statement. It seems pretty neutral.

THE COURT: Okay. So you can say it if you wish.

MR. HANNON: Okay. Thank you. That's all I have.

THE COURT: Sure. Okay.

Anything for you?

MS. MANDEL: No. Thank you.

THE COURT: Do you know if they're all there yet, Kellyann?

THE DEPUTY CLERK: I don't know.

THE COURT: Why don't you go check and see.

If they are and they're ready, I'm happy to start a little early, and if not --

THE DEPUTY CLERK: Okay.

THE COURT: So I was thinking about one thing, just for both of you, I assume it's not coming up in the closings this way, but I just wanted to bring it up.

So there's evidence that Dr. Menninger received short-term disability, long-term disability, and Social

Security Disability. And I think that's relevant evidence in various ways. The one issue that concerns me is that there's not much evidence, if any, about what is the criteria for awarding disability benefits under those policies and under the law. And my understanding of the law is that it's not identical to the ADA for the -- what are the requirements to obtain disability, or necessarily identical to what a jury would have to determine to determine, say, that Dr. Menninger couldn't ever work again. And so the only thing -- if -- I don't know if either of you are planning to argue that it is the same.

MR. HANNON: No.

THE COURT: Okay. Because if you did, then I'd feel like I'd need to explain to them that that's not the law.

MR. HANNON: Understood. I'm not going to touch that.

THE COURT: Okay. Fine.

MS. MANDEL: Your Honor, just one thing to note about our closing. We do have a chalk that we'll be using. We have sent an image of it to Dr. Menninger's counsel, as well.

THE COURT: Fine.

MR. HANNON: And just on that, we do dispute the accuracy of some of the facts asserted on the chalk, and if

the Court could just give a very brief, you know, instruction on that, just that it's not evidence. It's --

THE COURT: It's like part of the argument.

MR. HANNON: Yeah.

(The jury enters the courtroom.)

THE COURT: Good morning. Please be seated. No one discussed the case among yourselves or with anyone else, no one did any independent research. Right?

Good. Okay. So we're ready to go. Let me tell you that -- the exact just sequence this morning, just so you know how things are going to go and what's going to happen.

So my instructions are going to be -- I'm going to break my instructions up into two parts. I'm going to give you, in a moment, the first part of my instructions, and those instructions are about what is evidence, how to understand the evidence, how to think about witnesses. They're more general instructions like that. And then that's the first half of my instructions, you'll have everything that I give you, you'll have it in writing when you go back to the jury room, but that, essentially, the printed copy that you'll get, it's like parts one and two.

And then you'll hear closing arguments and you'll hear first from Mr. Hannon for the plaintiff, because they bear the burden of proof, and then you'll hear from Ms. Mandel for the defendants. And then Mr. Hannon gets to

make a brief rebuttal, because they have the burden of proof.

And then you'll hear from me on the last two parts of my instructions. The main part of that is then what are the things -- there are three claims here. What does Dr. Menninger have to prove for each of those claims. And I'll explain not only what the things are, but more detail about how to understand each of those, and then I'll have the last part of the instructions is a brief explanation of how to think about -- what to do -- how to deliberate. And then you're done and you'll go back, and we'll give you the exhibits and the instructions, and the verdict form, and you'll start your deliberations. Okay?

So first we'll begin with the first part of my jury charge as I explained to you on those first two topics.

JURY INSTRUCTIONS

THE COURT: So in defining the duties of the jury, let me first explain the general rules. It is your duty to find the facts from all of the evidence in the case. I will describe the law to you and you must apply the law to the facts as you find them. You must follow the law as I describe it, whether you personally agree with the wisdom of the law -- whether or not you agree with the wisdom of the law.

This instruction is a fundamental part of our system of government by law, rather than by the individual

views of the judge and the jury. It is your duty as jurors to decide the case fairly and impartially regardless of any person likes or dislikes, opinions, prejudices, bias, or sympathy for one party or another. You must make your decision based solely on the evidence before you and according to the law.

In following my instructions, you must follow all of them. They are all equally important. The lawyers are allowed to comment both on the evidence and on the rules of law in their opening and closing statements. But if what they have said about the evidence differs from your memory, then let your collective memory control. If what they have said about the law seems to differ in any way from my instructions, you must be guided only by my instructions. You must not read into these instructions or into anything that I may have said or done during the course of the trial, any suggestion from me as to the -- as to the verdict you should return. Whatever opinion I might have as to what your verdict should be is utterly irrelevant. The verdict is yours, and yours alone, to render as the finders of the facts. While I intend to be as helpful as I can in providing you with knowledge of the law that you will require to render an intelligent and informed verdict, the law commits this case to your sole determination as judges of the facts.

Plaintiff, you will recall, is the name we give to

the person or entity who brings a lawsuit. In this case, the plaintiff is Dr. Lisa Menninger. We referred to the parties sued as the defendant. In this case, the defendant is PPD Development, LP, which I'll refer to as PPD.

In a civil case such as this, a plaintiff bears the burden of proving her case by a preponderance of the evidence.

As I explained earlier at the beginning of the trial, this is a much lower standard of proof than that of, quote/unquote, proof beyond a reasonable doubt, the very high standard that we apply in a criminal trial. Proof by a preponderance of the evidence does not require Dr. Menninger to prove her case to any degree of mathematical certainty. Rather, she must produce evidence which, when considered in the light of all the facts and evidence in the case, leads you to believe that her claims are more likely true than not. If you find that Dr. Menninger meets this burden, your verdict must be for her. Should she fail to meet this verdict -- this burden, your verdict must be for PPD.

In determining whether any fact at issue in this case has been proven by a preponderance of the evidence, you may consider the testimony of all witnesses, regardless of who may have called them, and you may consider all exhibits received in evidence, regardless of who may have produced them.

Next is evaluating evidence.

Let me first review for you what is and is not evidence in a civil case.

Evidence is presented at trial in one of three ways:

First, through the sworn testimony of witnesses on both direct and cross-examination.

Second, evidence is presented through physical objects, such as documents, photographs, and videotapes that are identified by a witness and admitted as exhibits during the trial.

And third, evidence is presented by stipulation; that is, by agreement between the parties that certain facts are true and need not be independently proven as such at trial.

Certain things are not evidence and should have no influence on your verdict.

One, arguments and statements by lawyers, as I cautioned several times, are not evidence.

What the lawyers have said over the course of the trial or what they say in a few moments in closing argument you may find helpful, even persuasive, but the facts are to be determined from your own evaluation of the testimony of the witness and exhibits, and from any reasonable inferences that you choose to draw from the facts as you find them.

Two, questions to the witnesses are not evidence and may only be considered in the sense that they give context or meaning to a witness's answer.

Three, objections to questions are not evidence. Attorneys have a duty to their clients to object when they believe that a question is improper under the rules of evidence. You should not be influenced by the fact that an objection was made. If I sustained the objection, you should ignore the lawyer's question and any assertion of fact it might have contained. If I overruled the objection, you should treat the witness's answer like any other.

Four, testimony that I excluded, struck, or which I instructed you to disregard is not evidence. If you heard an answer to the question before my ruling sustaining an objection, you are to disregard it. That answer is not evidence. You should also ignore editorial comments made by the attorneys during their presentations, particularly those intended to characterize the testimony of witnesses. Whether or not a witness's testimony was believable on any particular point is a determination that only you can make.

Five, notes, if you have kept them, are not evidence. They are a personal memory aid to be used to refresh your recollection of the evidence during the deliberations.

And finally, anything you may have seen or heard

outside the courtroom during the course of the trial is not evidence.

There are two kinds of evidence: Direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of a witness that the witness saw or did something. Circumstantial evidence is indirect evidence; that is, proof of a fact or facts from which you could draw a reasonable inference that another fact exists, even though it has not been proven directly.

You all have experience in your everyday life drawing inferences based on circumstantial evidence. For instance, imagine it was sunny when you arrived here this morning, but just now someone walked into the courtroom wearing a wet raincoat and carrying a dripping umbrella. Without any words being spoken and without looking outside for yourself, you might draw the reasonable inference that it is now raining outside. In other words, the facts of the wet raincoat and the dripping umbrella would be circumstantial evidence that it is raining.

You are entitled to consider both direct and circumstantial evidence. Neither type of evidence is considered superior or inferior to the other. The law permits you to give equal weight to both. It is for you to decide how much weight to give to any piece of evidence.

Most evidence received at trial is offered through

the testimony of witnesses. As the jury, you are the sole judges of the credibility of these witnesses. If there are inconsistencies in the testimony, it is your function to resolve any conflicts and to decide where the truth lies. You are not required to believe the testimony of any witness simply because the witness was under oath. You may choose to believe everything that a witness said, only part of it, or none of it. If you do not believe a witness's testimony that something happened, that, of course, is not evidence that it did not happen. It simply means you must put aside that testimony and look elsewhere for credible evidence before deciding where the truth lies.

Often, it may not be what a witness says, but how he or she says it that might give you a clue whether or not to accept his version of the event as believable. You may consider:

A witness's character; his or her appearance and demeanor on the witness stand; his or her frankness or lack of frankness in testifying; whether the witness was contradicted by anything that he or she said before trial; whether his or her testimony is reasonable or unreasonable, probable or improbable, in light of all the other evidence in the case; how good an opportunity the witness had to observe the facts about what he or she testifies; and whether his or her memory seems accurate.

You may also consider the witness's motive for testifying, whether he or she displays any bias in doing so, and whether he or she has any interest in the outcome of the case. Simply because a witness has an interest in the outcome of the case does not mean the witness is not trying to tell you the truth. But a witness's interest in the case is a factor you may consider along with everything else. You may also consider the fact that a witness may be perfectly sincere in his or her account of an event, and simply be mistaken as to the truth.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things, get confused, or remember an event differently. Memory is not always reliable, and when someone recounts a story twice, it will seldom be identical in every detail, unless it is a memorized lie, or the witness is possessed of extraordinary perception and recall. It is for you to decide whether any contradictions in a witness's testimony are innocent lapses of memory or intentional falsehoods. That may depend on whether important facts or small details are at issue and how important the facts might have appeared to the witness at the time they were perceived.

The weight of the evidence does not necessarily depend on the number of witnesses testifying for one side or the other. The law does not require any party to call as

witnesses all persons who may have been present at any time or place involved in the case or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned by the witnesses in the case. You must determine the credibility of each witness who testified and then reach a verdict based on all of the believable evidence in the case.

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations. The defendant is a type of corporate entity known as a limited partnership. A limited partnership is entitled to the same fair trial as a private individual. All persons, including equal limited partnerships stand equal before the law and are to be treated as equals.

Expert witnesses. I want to talk to you briefly about that topic. The rules of evidence, ordinarily, do not permit witnesses to express opinions or conclusions. Normally, witnesses testify as to the facts and the jury draws conclusions from the testimony. An exception to this rule is testimony from those we call experts. Witnesses who, because of special training, education, skills, or knowledge, have been expert in some art, science, profession, or calling. Such persons may state their opinions as to

relevant and material matters in which they process to be experts, and they may state their reasons for their opinions.

In this case you heard expert opinions. You should consider each of the expert opinions received in evidence in this case and give it as much weight as you think it deserves. An expert opinion is subject to the same rules concerning reliability as the testimony of any other witness. Just because a person is testifying as an expert does not mean that you, the jury, have to accept that person's opinion. A person may be learned in some profession, but if you should decide the opinion of this expert witness is not based upon sufficient education and experience, or if you conclude that the reasons given in support of his or her opinion are not sound, or if you feel that the expert's testimony is outweighed by other evidence, or if you find the expert witness is not believable or credible, you may give the opinion only so much weight, if any, as you think it deserves.

Expert testimony must have a sound factual basis. An expert's opinion amounting to speculation unsupported by subordinate facts must be disregarded. It is your responsibility as jurors to determine what the facts are. The fact that the Court has permitted an expert to testify should not be seen by you, the jury, as any indication of the weight you should accord with the expert testimony.

So that concludes the first parts of my instructions to you.

So now we'll have the closing arguments and then, after the closing arguments, I'll deliver to you my instructions on the law, which is essentially what are Dr. Menninger's claims, what does she have to prove for each claim, and how to understand in a little more detail, maybe a lot of detail, the specific elements of each of her claims and then some directions on deliberations.

A reminder now as we turn to the closing arguments, I told you, the closing arguments can be helpful, they can be persuasive, but they're not evidence. And it's your collective memory of the evidence in the end that controls if it differs from what the lawyers say. The lawyers are not only entitled to speak to you, as I expect they will, but they're also entitled, if they wish, to present to you what we call chalks.

So you've seen documents in evidence and those will be going to you in the jury room. A chalk is a reference to sort of what some of you might remember from grade school. Literally things written on the chalkboard, right -- so, in this era, sometimes people write things on a blackboard, but sometimes they have an electronic copy. And so you -- one or both of the parties might present something like that, and it's just like their words. It's just something that is part

of their argument. They're entitled to present it and you treat it just the same. It's not -- you won't have a copy -- you won't have a transcript of what they say, and you won't have a copy of whatever they present to you in closing argument, unless it's already in evidence. Then, of course, you will. If they pull up an exhibit, you'll have that, because it's an exhibit, not because they pulled it up in closing argument.

So -- and you view any argument and any chalks of that nature they present, just like their argument in totality.

Okay? All right.

Go ahead, Mr. Hannon.

MR. HANNON: Thank you, Your Honor.

CLOSING ARGUMENTS BY COUNSEL FOR PLAINTIFF

MR. HANNON: Good morning. I know it's been two weeks since we started this adventure together and I know you've seen a lot of documents, a lot of highlighting and all of that. I don't have time right now, thankfully for you, to go back through all of that and I'm not going to try to. I might have the urge to show you a handful of documents and I'll try to make those brief and not be too repetitive. But as the Judge alluded to, this is sort of our opportunity to talk over the evidence that -- from our sort of perspective. And I know you've all been paying very, very close attention,

so I'd like to spend my time right now sort of walking you through not just the evidence, but how I sort of see it fitting in with respect to the questions you have to answer.

Once we're done and the Judge instructs you on the law, you're going to get a verdict slip that's going to have a number of questions for you to answer, and that's going to be your verdict. And the Judge has already kind of shared with us that, and what we expect he's going to instruct you on. So let me just sort of jump in there.

The first question you're going to have to answer has to do with reasonable accommodation, specifically whether or not PPD violated the law by failing to provide Dr. Menninger a reasonable accommodation. Reasonable accommodation, I suspect, you're going to find is probably the most complicated claim in this case. And just by way of preview, there's sort of three questions on sort of liability, three questions on whether or not PPD acted unlawfully. The first one is going to be whether or not they failed to provide a reasonable accommodation. The second one is going to be whether or not they, on the basis of Dr. Menninger's disability, subjected her to an adverse action, and the third one is going to be whether or not they retaliated against her.

So it's going to be reasonable accommodation, adverse employment action, retaliation. And the sort of

different analytical ways to sort of approach those different three claims, I think you're going to find that they go from most complicated to least complicated. But I'm going to take them in order just to hopefully make some of this make sense.

With respect to the accommodation claim, the first question surrounds Dr. Menninger's entitlement to an accommodation. And as you're going to hear, part of that has to do with whether or not she had a disability. And the Judge will instruct you in terms of what constitutes a disability under the law. I suspect -- I'm already showing you something here. I suspect you're going to find a particular document helpful in addressing those questions. So this is Joint Exhibit 47. And you'll recognize here, this was the initial request for accommodation form submitted by --

It's not on your screen?

THE DEPUTY CLERK: Are you on HDMI-1?

MR. HANNON: I am on HDMI-1, yeah.

THE DEPUTY CLERK: Okay.

THE COURT: Something popped up for a second on my screen, but it's gone. I see your logo.

MR. HANNON: We're there?

THE COURT: No.

MR. HANNON: Forget that. You've seen the document.

THE JUROR: It's there.

MR. HANNON: Of course it is. I think Ms. Belmont's messing with me.

So you'll recall seeing this document. This was the initial correspondence of Dr. Kessimian with respect to the accommodation request. You'll recall that this form kind of walks through a series of questions, mental impairments, substantially impairs a major life activity. I expect that you're going to find that those questions largely track with what the Judge is going to instruct you with respect to the law, in terms of what qualifies someone as being disabled under the law.

A couple of things that I'd ask you to keep in mind and listen closely with respect to the Judge's instructions on this issue. One is that we talk about a major life activity. We include things like speaking, like breathing, interacting with others. It's a very broad list of the types of things. I expect you're going to hear from the judge that, when you're deciding whether or not the impairment substantially limits a major life activity, pay close attention to what the judge says regarding this not being a demanding standard; that this is intended to be applied broadly in favor of expansive coverage.

I expect you're also going to hear that you have to take into account instances that are episodic, and by

"episodic," meaning you know, things that don't happen constantly, but there are episodes. And I would suggest that, from the evidence in this case, the best example of that is like a panic attack, right? That's not something that Dr. Menninger suffered constantly, it was an episode that would arise on occasion. It was an episode that as you would -- as you heard, would restrict her ability to breathe, to talk, to think. And I would suggest to you, that's really the sort of easiest example here, and when you look at these different elements, to understand that she did, in fact, have a disability under the law.

You'll also note that having a disability doesn't necessarily have to prevent you from success. Right? There are lots of people who have disabilities who, nonetheless, are able to achieve, you know, fantastic things. I expect the Judge will provide a specific example, you know, for example, somebody with a learning disability. Just because they're able to overcome that disability with extra study and extra effort, doesn't mean they don't have a disability within the meaning of the law. Again, this is expansive coverage.

So with respect to having a disability, I anticipate that that should be a fairly easy question to answer.

Moving on, you'll have to decide whether or not she

was a qualified individual. And you're going to hear there's sort of two pieces to that. One is that she has sufficient education, skill, experience, qualifications for the job. And obviously, she did, right? We know this was a job that she had been in for several years, she had been performing successfully, has a very impressive resume. She was clearly qualified.

The second piece of that same element concerns whether or not she could perform the essential functions of the job. And this is where the accommodation claim gets a little bit complicated. You heard the Judge mention earlier the burden of proof, the more likely true than not true, and you're going to find that on most elements, as the plaintiff, we have the burden. This one is a little bit different. You're going to hear that with respect to establishing what the essential functions of the job are, that that's going to be PPD's obligation, to convince you it's more likely true than not true that something was an essential function.

And the Judge will tell you what it means, an essential function. We expect he's going to tell you it's a fundamental job duty of the position, and you're going to hear there are essential functions, and then there are nonessential functions, what we call marginal functions. And you'll have to decide what constitutes an essential function versus a marginal one.

I would submit that, based upon the evidence presented here, that's really not much of an issue. Again, Dr. Menninger was in the role for many years. I submit to you that there is no evidence that she was ever given a particular assignment, a particular task that she was unable to do. She did the job. It wasn't always easy. Sometimes it was hard. Sometimes it caused her pain and distress, but she got the job done. There's no claiming here that she didn't. So I would submit to you that the evidence certainly establishes that she was a qualified individual.

Turning to the next element, which has to do with her request for an accommodation. And you're going to hear that the evidence has to show that she made a sufficiently direct and specific request. And I think one way of thinking about that is if you all go back in the jury room, and you guys think of an awesome idea of something that she could have requested, it doesn't do me any good. So the actual request that they denied has to be something that's here in the evidence, something that was actually talked about or discussed during the time of the events at issue. We can't start new from whole cloth. So you're going to have to consider the things that are actually in the record that are being talked about at the time.

Next comes to the actual accommodation itself. Was it reasonable. And this is complicated, too. So you're

going to hear that, in the first instance, we have the burden of showing that it was reasonable, at least on its face. Right? And this is something that they could do, taking into account some of the various factors that the Judge is going to provide you. He's going to give you an example of what a reasonable accommodation is, and what a reasonable accommodation isn't, and then you have to evaluate what side of the ledger it falls on.

If you find that it's reasonable on its face, then the burden is going to shift to them to show that, providing it wouldn't be an undue hardship.

So turning to the fact here, when we're talking about a reasonable accommodation, I suspect that the first inclination might be to look at the buckets and look at Dr. Kessimian's proposed accommodations with respect to that. And I suggest to you that that's fine. I suggest to you that if you look there that you're going to find that those were, at least on their face, reasonable accommodations, in part because the Judge is going to tell you that reasonable accommodations include modifying when and how a function is performed. It's going to include altering, reassigning, eliminating nonessential job functions. He's going to tell you that it includes things like that provision of qualified readers. I expect, if you look at Dr. Kessimian's e-mail that, yes, those are, at least on their face, reasonable.

And we -- I expect when you consider the evidence you've heard, there's been no evidence to establish that they've met their burden to prove that any of that would cause an undue hardship.

But I don't think this case is really about that set of requests of accommodations. I would submit to you that what this case is really about is the first set of request for accommodations, the one that Dr. Kessimian made on January 31, 2018. And if you recall what those were, fundamentally two things. Right?

First, try to minimize the public speaking and social interaction to the extent that we can. Right? You're going to see, there's no specific thing that has to be an accommodation, right? An accommodation doesn't need to fit within a certain box, right? So something like this proposing that let's just simply try, to the extent we can, to minimize public speaking. I submit to you that's a perfectly fine reasonable accommodation, right? That's an easy ask. It's not a big one. Right? Let's just think through what are the tasks that you really need her to do, and can we try to alleviate some of her stress and some of her symptomology by taking some of the other stuff off of her plate. That's a pretty good request, I would submit.

And then she says, and if you can't, right, if it's deemed necessary, let's make a plan. Right? And let's

figure it out. Let's find a way that she can do those things and she can do these things in a way that's not going to cause her undue burden, undue stress. Right?

I submit to you from the evidence that you heard, that was a pretty good accommodation request, as well, that that's facially reasonable. Right? And the reason why I point to these, I suggest, as really being what this case is about, is because this is the way things actually played out. Right?

So we have the five buckets, right? The five ways that Mr. Mekerri said that the job was going to change and grow, and all of that. But none of those things ever actually happened, right? He gives her that list in February. By the time that she leaves at the start of June, she hasn't been asked to do any of those extra new things. Right?

Really, where those things come into play here is that it's the anticipation. It's the fear that those things are going to happen. It's the uncertainty. And I'm going to talk more about that in a moment.

But as we're talking about that, keep in mind what Dr. Menninger is doing. She's asking questions, right? She's saying, can we talk about these things, can you give me some more information regarding buckets two, three, and four. She's doing exactly what Dr. Kessimian recommended. Right?

If you're going to tell us that these are things she has to do, let's make a plan. Let's communicate. Let's talk about it.

Over and over again, she asked them, "Can you tell me? Can we talk about it? These are things that I can do. We can work with these things." And time and again, they didn't respond.

I'd submit to you that, in answering the first question with respect to accommodation, that that is the violation here that's most easily recognized. And that's the violation here that I would submit to you is the one that really caused Dr. Menninger the most harm. It was the -- it was the not knowing. It was the lack of a plan. It was the lack of understanding. And Dr. Kessimian told them right here, on January 31, 2018, that that was something that would help alleviate the symptoms and stress of her disability. And they denied it to her.

And they had no good reason for doing so. You've heard no explanation here in terms of why they couldn't give her that extra detail. You've heard no explanation here in terms of why they couldn't just talk to her like a normal human being. What the evidence has shown was the reason why they didn't talk to her, they didn't answer those questions, they just didn't want her to succeed. Right? Because they had decided in February of 2018 that she was going to exit

the company. That was the strategy that they were pursuing. And they denied her that accommodation, the one that they knew was going to help her do her job, help alleviate the stress and symptomology of her illness, and they did that because they wanted her to fail, and they broke the law.

That's reasonable accommodation.

The next claim, as I mentioned, is discrimination through an adverse employment action. And this one has some similarity to the first one. So, again, you have to answer questions about was she disabled? Was she a qualified individual with a disability? Same law applies. Same facts apply. So if you found that for the first one, you kind of get to jump ahead a little bit when you get to the second claim.

And really, assuming that you've -- you've answered the first question the way that I suggest, when you get to the second claim, really, the question is going to be whether or not they subjected Dr. Menninger to an adverse employment action. And I think it's worth pausing with that phrase "adverse employment action."

You're going to hear about two kinds of actions here. For the second question, you'll hear about "adverse employment action," when we get to the retaliation piece, we're going to talk about adverse action. And the Judge will instruct you in terms of what the distinction is. I would

suggest that one easy way of thinking of it is adverse employment action is just a higher standard. And when we're talking about adverse employment action, you're talking about a material change to the terms and conditions of the employment.

When we talk about retaliation, we're going to talk about something different and I'll save that for then.

In evaluating whether or not Dr. Menninger was subjected to an adverse employment action, you're going to be asked to consider basically two things. One concerns the expectations for her role as executive director and the other concerns the goals for her role as executive director. And I would submit to you that the evidence has shown that, after they found out that Dr. Menninger had her disability, that they took adverse employment action with respect to both.

And let me walk you through what I mean. So first concerns the buckets, the five buckets. Right? So prior to Dr. Menninger disclosing her disability, there was supposed to be an accommodation.

If you go back to Joint Exhibit 366.

Is that up on the screen?

THE JUROR: (Affirmative responses).

MR. HANNON: All right. So this is the thing that started it all, right? This was Dr. Menninger's e-mail to Mr. Mekerri, disclosing her disability. You heard about what

the events were that led up to sending this e-mail and all of that. I want to highlight for you one little piece of this -- I know I said I wasn't going to highlight -- "As you mentioned that you'd like to discuss some ideas you have regarding how to make my role more visible, I think it's important that I make you aware of a medical condition that I've been suffering from."

You'd like to discuss some ideas. This was the state of affairs prior to Dr. Menninger disclosing her disability to PPD, that there was going to be a discussion regarding how to potentially change or adapt her role in order to allow her to provide more support towards these business goals. After she disclosed her disability, that changed dramatically, right? There was no -- there was no discussion, there was no brainstorming, there was no back and forth. Right? It became a very cold, very distant, very arm's length sort of process. Right? Rather than have a discussion about ideas, it became a list of buckets. And when Dr. Menninger asked for additional detail regarding those list of buckets, they wouldn't talk to her about it.

Why does that matter? Well, knowing what your job is, I submit to you, is a material part of your employment. And you heard that with respect to this particular role, that the job descriptions were written very broadly, right? You heard Mr. Clendening, when he was up on the stand, I think he

confirmed that for you, that, you know, they all had these sort of same general things, but then everyone had their own swim lane. I believe that's the phrase he used. The idea that, yes, it was broad, but they all had their own sort of defined area that this was -- this was their role.

Prior to disclosing her disability, Dr. Menninger had a swim lane. Right? She knew what her job was, she knew what was expected of her, clearly defined, just like every other employee was entitled.

After she disclosed her disability, she didn't have a swim lane, anymore, right? They gave her a general sense of it was going to be broader, but they wouldn't tell her exactly what it is, right? Rather than have her own swim lane, she had the whole pool. And when she asked them for clarity in terms of helping her to understand where the ropes were, what her swim lane was, they wouldn't tell her. And I submit to you, that's a materially adverse employment action, that the evidence shows that other employee, they got to know what their job was, they got to understand what was expected of them. But once Dr. Menninger disclosed her disability, they were no longer willing to give her that clarity. They were no longer willing to have that discussion.

And why was that? We'll get to that in a moment in terms of the causation of this. But that's one of the adverse employment actions that I submit the evidence

supports.

The other concerns the goals. Right? So we see on the front end of this with respect to the changes to her role, what they do there. Let's look at the back end, right? Because we see that later on in the year, into April and May, they start talking about adapting goals. They start talking about, well, the expectation for your role now, the goal for your role now is going to be eliminating lab issues.

That was never the expectation before, that was never the requirement before, right? They were moving the goal posts on her in terms of trying to set an expectation, trying to set a requirement that she achieve that objective.

And make no mistake, that's exactly what they did. You go back and look at the criticisms that they offer of her, look at the goals that they're trying to make. The standard that they're setting for her in April of 2018 is that, if lab errors occur, that is reflective of a deficiency on your part. They changed the rules. That had never been like that prior to her disclosing her disability. Prior to her disclosing her disability, you heard what they did in terms of lab errors. You heard that lab errors happen all the time. You heart about that daily triage meeting. You heard about the extensive process they had for invetigating, finding root cause, looking at corrective action. Right? There was a process, that was the expectation. That was the

way she was judged. And after she disclosed her disability, they moved the goal posts. That wasn't going to be good enough anymore. They were going to judge her by a different standard and I submit to you that was an adverse employment action.

A couple things to note as you listen to the instructions from the Judge on this, listen carefully in terms of from the perspective that you judge this, that you -- you judge the adversity of these actions from Dr. Menninger's perspective, someone in her circumstances, someone who's living this the way that she lived it.

After finding that there was an adverse employment action, obviously it turns to the question of why was that? Why was it that they wouldn't give her the swim lane? Why was it that they moved the goal posts? And I submit to you that the evidence clearly shows it was because they knew she was disabled. There is a stark contrast between how they treated Dr. Menninger before she disclosed her disability and how they treated her after. She went from being an asset in the organization to being a liability. Right? PPD has told you all the wonderful things that they did for Dr. Menninger in terms of supporting her move from Kentucky to Massachusetts, paying for her move when she started her job. She was well compensated. She was well respected. Everyone loved her. And then they found out she was disabled and then

they stopped talking to her. And then they started planning, well, we got to have a backup plan here. And then you heard what they did. You saw their own words. You saw in writing what they decided. You saw in that February 28th e-mail, the one that Mr. St. John sent to Ms. Ballweg, the one that attached the coverage grid.

You saw those words, "delicately work Lisa out." They made a decision. They made a decision once they found out she was disabled, they didn't want her anymore. And that was their choice. And they started delicately, they float the offer of a separation package and, you know, some short-term consulting. They tried it delicately. She said, no, I don't want -- I don't want a payoff. I'm not doing this because I want money or I want -- I want my job. Right? I just want to be able to care for my family and do the things I've been doing. And when the delicate approach didn't work, they went for the tougher one, right? Because she wasn't going to go easy.

And they have no excuse for that. When I confronted Ms. Ballweg with those four words, "delicately work Lisa out"? What did she say? Did she admit what was obvious? Did she admit that the words mean what they mean? She didn't, because she couldn't. Because if she did, she would be admitting to breaking the law. So what did she say? "We were trying to help Lisa. We were just trying to help

her."

Does that make sense based upon this evidence that they were trying to help Lisa? If they were trying to help Lisa, wouldn't they have answered her questions? If they were trying to help Lisa, wouldn't they have treated her -- wouldn't they have talked to her? Would they have done what they did if they were trying to help Lisa?

They made the decision they didn't want her anymore. And that's directly related in terms of time and sequence and all of that, to the disclosure of her disability.

And they're going to try to tell you a different story. They're going to try to look at the past and say maybe this all started when she started working remotely. Well, okay, so we have this one e-mail with this one other person who had concerns about her remote status, and maybe we can tell a different story. I submit to you, members of the jury, those dots don't connect. Right?

Consider this. If they had concerns about Dr. Menninger's remote status, why isn't that reflected in the five buckets? Right? When Dr. Menninger is asking them, okay, what are the things -- what are the new, additional things you want me to do? And Mr. Mekerri sits down to write those, why doesn't he write down travel to Highland Heights more frequently? Why doesn't he say go and supervise your

staff more? Why doesn't he say visit the pit more? He doesn't do any of that, because this had nothing to do with that. This was about taking more of a customer-facing role. That's what the conversation was about in December, that's what his e-mail was about in February when he laid out those five buckets. And they're trying to tell you a different story now.

And consider, too, how the accommodation discussion worked out, right? What were the ones they agreed to accommodate? Well, one of them was the travel. Does that make sense? If all of this had to do with their concern that she wasn't coming to Highland Heights enough, right, to do the most essential feature of her job, to provide scientific oversight, if that was the concern, if that was a problem, do they reduce her travel by half? From 30 to 15 percent? That doesn't make any sense.

If that was a concern, if that was a problem, there would be something reflected here in the documents to show it. Somebody would have asked. We want you to go to Highland Heights every month. We want you to go to Highland Heights more frequently. That had nothing to do with this. They came up with all of that later. They came up with all of that as a means of trying to justify what they did at the end, of blaming her for lab errors. It's not a true story.

The true story here, members of the jury, is that

they found out that she was disabled and it was scary. Right? We talked about that at the end of my opening statement, when people find out that folks have disabilities, especially mental health disabilities, our first reaction is not, you know, great, come run my laboratory. If that was our first reaction, we wouldn't need laws like this, we wouldn't need juries like you. Right? The natural reaction is to have a little bit of fear, right? The natural reaction is to be a little bit ignorant, right?

But the law requires us to do better. The law requires us to put that fear aside, to put that ignorance aside, and to rely upon actual facts.

And this wasn't some person they weren't familiar with, this wasn't some person off the street that they didn't have experience with. This was Lisa. They knew Lisa. They knew her talent, they knew her abilities. They had seen it. They judged her high. They thought she was brilliant. They thought she was so good they wanted her out in front of clients more. That's how they viewed her. Those were the facts that they had. But once they found out she was disabled, once they got that scary information, they put the facts aside, they let the fear -- they let the ignorance dictate their actions, and that's how they broke the law.

Let me pause there for a moment about the law and just say this. This isn't about being woke. Okay? This

isn't about creating safe spaces and some kind of snowflake culture. All right? This is about helping people work, right? This is about people who want to have jobs, who want to earn money, who want to take care of their families, who want to pay taxes -- maybe don't want to pay taxes, but will pay taxes. Right? This is about allowing people like Dr. Menninger to be productive members of society. Right? To add to our economy, not to be a drain on us, not to be what she is now, in terms of relying upon public assistance.

So as you consider this evidence and what we're talking about here, this isn't about coddling, right? This is about allowing an individual to do their job because they're good at it, because notwithstanding their disabilities, they have talents, they have abilities, and they can contribute, just like Dr. Menninger did for the years before they found out she was disabled.

Let's talk about retaliation. And I mentioned before that I would submit to you this is the easiest one. So for retaliation, it's really about this: In response to Dr. Menninger requesting an accommodation, did they then take action against her, which a reasonable person doing that action might be dissuaded from coming forward?

Can you say that a little -- the judge will say that better. But I submit to you that that sort of concept is this. If Dr. Menninger knew that once she disclosed her

disability that they were going to stop talking to her about her role changes. If she knew that after she disclosed her disability they were going to start trying to formulate a plan to delicately work her out; if she knew that after she disclosed her ability, they were going to be looking for an exit strategy to get her out of the company. If she knew that after she disclosed her ability, that they were going to start increasingly scrutinize her actions, blaming her for things that were not her fault, and changing her goals, would she have ever raised her hand? Would she have ever said, "I have a disability and I would like an accommodation."

The answer is no. Right? No one would do that if they knew that your employer could do that in response. And that's what the retaliation claim really kind of comes down to, is whether or not the actions they took in response to her making those requests, whether those are the kinds of things that would dissuade someone from raising their hands and coming forward.

It's a scary thing to do. You heard it was a scary thing for Dr. Menninger to do and you heard that she was right to be scared, because they did exactly what she was afraid they would do.

Which brings us to the issue of damages. There's three kinds of damages here. One is financial. It's the economic damages, in terms of her lost compensation. You've

seen the numbers on that. There's no exact science, right? There's no way of predicting with exactitude in terms of what would have transpired in the future, but that doesn't prevent you from awarding damages, right? If that would prevent us from awarding damages, I wouldn't be here. Right? So you need to make a reasonable judgment based upon the evidence and the judge will talk to you a bit about that.

Keep in mind the standard, right? More likely true than not true. And I would submit to you that the evidence that we've presented on that, it's all based in fact, right? It's all based in the record. Mr. Jonas's numbers were based upon her actual comp in 18. You heard the estimates are all kind of reasonable within ranges. And you heard a little bit of different evidence from Mr. Clendening. I would ask you all, consider the source. I think you heard what the Judge mentioned, part of your role here is to determine the credibility of witnesses. Did you find Mr. Clendening credible? Was there anything about his testimony that caused you to believe that maybe he's not telling the truth, and I would respectfully submit that his denial of remembering seeing that e-mail from Mr. St. John would strongly suggest that he's not a person you should trust or you should believe.

THE COURT: You're at 35, Mr. Hannon.

MR. HANNON: I'm sorry, Your Honor?

THE COURT: You're at 35.

MR. HANNON: Okay. Thank you.

So very quickly, front pay, again, this is not an exact science. Might Dr. Menninger, again, maybe someday be able to return to work? I certainly hope so.

Is she ever going to go back to working in a lab like she did at PPD, one that has an HR function like they did, that subjected her to what they did? I submit to you she's not.

As you heard from the -- from Dr. Summergrad in this case, what she went through was her worst nightmare. Right? He told you about the underlying sort of phobic concerns of this disability, the idea of sort of exposing one's self and then being rejected and being humiliated. I submit to you, it's sort of like someone who's afraid of flying. Right? It's not the flying that they're afraid of. It's the crash. Right? And Dr. Menninger's fears here surrounding social encounters and public speaking, it was the fear that they were kind of like going to see her and reject her.

And that's exactly what happened here; that when she raised her hand and disclosed her disability, she showed herself to them in a way that she didn't even show her own sister, right? And she took that huge risk and exactly what she was afraid of is what happened, that when they saw her

true self, that they said, look, and they rejected her and they humiliated her.

And the fear of going back into an environment to suffer that rejection again, the fear of getting back on the airplane after it crashed, I subject to you that's not easy to overcome, especially when those fears and when that pain gets to you a point where you start considering suicide, where you have to be constantly medicated, where you're in five years of treatment, and not doing so well.

So I would submit to you that judge the more likely true than not true standard, that with the way the evidence lies is that she's not likely to earn comparable employment.

And as you listen to the Judge's instructions, I ask that you keep in mind that word "comparable." You heard in the cross of Mr. Jonas the idea of, well, what if she goes and flips burgers? That's not the question before you. The question is comparable employment, something similar to what she had before. And again, given her experience and given her trauma, and given her physical health, I submit to you that there is next to zero likelihood that she would ever return to a job like this again, particularly a corporation with an HR function.

Emotional distress. You've heard a lot of the psychological, psychiatry evidence, underlying phobias and all of that. And some of that may be hard to get, but some

of it we can understand in our common experience. Our jobs matter to us. We take pride in our jobs. And when you succeed, despite your difficulties, dispute your drawbacks, I submit you take more pride. The fact that she had overcome so much to get to this spot in her life. The fact that she was able to be the breadwinner, she was able to care for her child, care for her husband, that's the kind of thing that everyone takes pride in. You saw from her expert witness, Dr. Kessimian, hates seeing examples with, you know, people who didn't already have disabilities and they went through that kind of thing, and they kill themselves.

Here it's magnified. Again, this wasn't just an ordinary situation of somebody losing their job. This was someone's worst nightmare coming true and she has decent days, and she has bad days. And you've seen her ability -- you put her in fight or flight mode, she fights, and she's good at it.

But consider this, what happened when she closes her eyes at night, when she thinks back to what she's been through, what her family's been through, when she considers where she was, and where she is now. When she thinks about the impact on her daughter, and when she thinks about why it all happened, right? You heard Dr. Summergrad talk about part of the concern being this sort of blaming yourself? Why did this all happen? It happened because she raised her

hand? It happened because she asked for help. And I submit to you every time she closes her eyes, that's what she has to see, and that's what she has to live with. And you heard about her dreams and you heard about her nightmares, and that's the life that she's lived for five years. And I submit to you, that's not going to change anytime soon.

The last issue with respect to damages you'll have to consider is punitive damages. And just a few comments on that. The judge will give you instructions there. This is outrageous behavior. This was not an accident on PPD's fault. This wasn't just one person acting by themselves doing something stupid. This was a concerted effort, at multiple levels of the organization, by some very, very, smart, very, very experienced people. They knew what the law was. They knew what their obligations were. They knew exactly what they were doing.

You saw the e-mail exchange between Dr. Fikry and Ms. Ballweg, asking when is her exit. What does she say? We're a long way off unless she self-selects. Unless she quits. Right? That was the -- that was the strategy here. That was the game. Turn up the heat. The delicate approach didn't work. Let's take the more aggressive approach. Let's drive her out. Let's make it harder on her. And they did it, knowing she was disabled. They did it, knowing she had an anxiety disorder. They knew they were playing with fire.

They just didn't care. It was a choice. It was deliberate. It was outrageous.

And they still do it today. Have they shown any remorse? Have they come here to this court? Have they told you the truth? Or have they continued to try to deflect? Have they continued to try to mislead?

Again, this is important. This is important to Dr. Menninger. This is important to disabled people in general. These are laws that have significant impact,' we rely on people to follow them, and when they don't, they cause harm, they cause significant harm here, and I submit that an award of punitive damages is appropriate and necessary, applying the factors as the Judge is going to tell you in a few moments.

I might have a couple of minutes to respond after the other side goes, depending on how much time I've taken, but I do thank you for your time and attention, and that's all for now.

THE COURT: All right. Thank you, Mr. Hannon, I remind you, you do have three minutes.

Ladies and gentlemen, the statements of lawyers can be helpful and persuasive, but they're not evidence.

Ms. Mandel.

CLOSING ARGUMENTS BY COUNSEL FOR DEFENDANT

MS. MANDEL: This is a hard case. You have

listened to testimony for two weeks about Dr. Menninger's mental health challenges and her belief that her struggles are all the fault of PPD. It isn't easy to see Dr. Menninger cry. I'm sure you feel badly for her. I know I do. But sympathy is not the legal standard here, as you will hear from the Judge.

In fact, even if Dr. Menninger herself truly believes that PPD is to blame for all of her challenges and her struggles, that is not the legal standard.

No one questions that Dr. Menninger believes PPD is at fault. But the fact is, Dr. Menninger's troubles, her challenges are not on the shoulders of PPD, as much as her situation is sad and as much as she has internally believed that PPD is to blame. Merely asking an employee to do the job that she has done well in the past, and even expanding the job to include more tasks, is not discrimination. It is not retaliation. It is simply what happens at work.

Listening to Mr. Hannon, you might have been expecting to hear the moment when Dr. Menninger was disciplined. That never happened. You might have been waiting to hear about the moment when Dr. Menninger was fired. That never happened. Let's look at the actual facts that we've learned.

Dr. Menninger's job as an executive running a global set of labs around the world, evolved as PPD's

business grew, and she worried that she couldn't do the version of the job that the company needed. As soon as she heard about these evolving expectations, back here, in December 2017, she didn't tell PPD that she couldn't do the job. She didn't go see a psychiatrist. She hired Mr. Hannon. She hired a lawyer.

As soon as she learned that PPD expected more of her, that was her first move.

And then, weeks later, she told PPD for the first time that she has anxiety and was worried about whether she could do the job. That didn't happen until here. (Indicating). Only after that, she went to see a psychiatrist, Dr. Kessimian, the first psychiatrist that she had seen in years. We heard repeatedly that the mere act of telling PPD about her anxiety sent Dr. Menninger into a downward spiral. No one disputes that that happened, but that's not something that PPD caused. That's not something that PPD controlled.

Dr. Menninger's husband testified that she couldn't get out of bed starting in January 2018. That happened back here (indicating), before PPD had done any of the bad things that Mr. Hannon said happened here. At that point, in January of 2018, Dr. Menninger's own husband said she couldn't get out of bed. Is that PPD's fault? PPD certainly feels badly for Dr. Menninger that that happened, but it's

not PPD's fault.

PPD simply asked Dr. Menninger to do more of what she had already been doing well. Dr. Menninger told PPD that she thought that that would be a problem because of her anxiety and that is the point when she spiralled downward. PPD hadn't done anything at that point, and she already decided that PPD was to blame.

Mr. Hannon wants you to believe that PPD's meeting with Dr. Menninger in late February 2018 is what sent Dr. Menninger into the downward spiral. But we know that isn't true. It's not just not supported by any evidence. Again, Dr. Menninger's husband and her psychiatrist, Dr. Kessimian, described that spiral starting weeks before, in January of 2018. Even Dr. Menninger's psychiatric expert, Dr. Summergrad, he said that, too. In fact, Dr. Menninger had panic symptoms simply being in the airport on her first trip to Highland Heights, in fact, the only trip to Highland Heights in 2018, just being in the airport caused those panic symptoms. PPD didn't cause that.

The second that Dr. Menninger told PPD she had an anxiety disorder, she had already convinced herself things were terrible. Her doctor talked about her catastrophic thinking about that time and PPD hadn't done anything. Dr. Menninger had disclosed her disability, but that's the moment when the catastrophic thinking began. Her husband

knew that, her psychiatrist knew that. And remember, she had already hire a lawyer before PPD did anything.

In her mind, PPD never had a chance. You've heard a lot of noise, but let's look at what we've actually learned through the evidence.

Dr. Menninger's boss, Hacene Mekerri, cared about her and wanted to support her. When Dr. Menninger asked PPD to accommodate her and let her live a thousand miles away from her primary lab to take care of her daughter's mental health needs and stop her from being bullied at school, Mr. Mekerri said sure, pick up your family, move across the country if that's what you need to do. I'll support you, even though others in the company are telling me it's a bad idea. I'll support you, move across the country to Massachusetts, just come back here and run the lab. And Mr. Mekerri supported her. The evidence is very clear. There's no question that Mr. Mekerri supported that.

When Dr. Menninger didn't hold up her end of the arrangement to come to Highland Heights regularly to run the lab and lead her team, PPD didn't discipline her. They didn't give her a warning. Mr. Hannon himself just told you that. They didn't tell her to move her family back to Kentucky. They simply asked her to be a more present leader.

When the business needs picked up for everyone, as you've heard from multiple witnesses, Mr. Mekerri told all of

his executive directors, all of them, that they needed to be more visible and work with customers. Everyone got that same message, not just Dr. Menninger.

And once Dr. Menninger said she couldn't do those things, Mr. Mekerri never made her do them. She was never asked to do any of the things she said she couldn't do, not one of them. The discussions about whether Dr. Menninger could and needed to do those things went on for four months. That's what was happening in the spring of 2018. But in reality, Dr. Menninger traveled to Highland Heights, Kentucky, where she was running a lab once during that time period, just once, but no one disciplined her, no one told her that he had to get on a plane and come more often. She came once. You haven't heard any evidence, and there is no evidence, that the company turned the screws to her and said hey, you got to get on a plane, you have to get here, you have to have more panic attacks, because it didn't happen.

PPD even said, "You can't come to our senior leadership meetings? Okay. We'll hire a surrogate, we'll have a surrogate do that. We are not going to make you do that if that's too hard for you. It's hard for you to travel to Highland Heights? We'll just cut your travel requirement in half. PPD said we will do those things. What they couldn't do and what they said they couldn't do, kindly and professionally, but firmly, is that they wouldn't have a

surrogate, they wouldn't hire another person to do her job as the medical leader of the lab, talking to customers, helping them get business from customers, answering the medical questions. Why? Because Dr. Menninger, a clinical medical pathologist, who is an executive in the company, she was the top medical leader for the company, for their lab business, and she needed to have those conversations for the business. They simply couldn't let that go, even though they helped her in all of the ways they could, she still needed to represent the company's lab. That was something they just couldn't change.

We have seen many times the only two letters that Dr. Menninger's physician ever sent to PPD. The first, in January of 2018, told PPD that Dr. Menninger had two types of anxiety, a panic disorder and agoraphobia. Mr. Hannon reminded you of that letter this morning. Dr. Kessimian said in that letter that any need to increase social interaction, any need to increase social interaction or public speaking would worsen Dr. Menninger's symptoms. She also said that Dr. Menninger simply couldn't do those things without her doctor's input.

She was an executive in the company, the top medical leader in a set of global labs, and any increased social interaction was a problem. The company wanted to help her, but that's a very serious instruction from her doctor.

Then, after looking at the specifics of Dr. Menninger's job, and remember, not even knowing where her job was located, that it was a thousand miles away in a lab that Dr. Kessimian didn't even know about, she said, "In the weeks leading up to social interaction and public speaking, Dr. Menninger had serious physical symptoms, insomnia, panic attacks, gastrointestinal problems, and weight loss. Her doctor's own words were that she couldn't tolerate these activities. Doing them made it as if her vocal cords and brain became paralyzed, while her blood pressure, heart rate, and breathing all increased. Those were her doctor's words. And in fact, the last letter that she ever sent to PPD, they were very worried. They were concerned that Dr. Menninger being asked even to do the basic parts of her job would physically harm her.

Then her doctor said there were three categories -- that the three categories -- there were three categories that require the company to put in place a surrogate. A surrogate, meaning not Dr. Menninger. She would no longer do those parts of her job. She wouldn't speak to customers, she wouldn't present internally for the company. She wouldn't help the company get new business for customers, even though she was the top medical executive for the labs.

For one category, she even said Dr. Menninger can't do it at all. She can't go to dinner, she can't go to

lunches. She can't be socializing with the clients. That's what the doctor said. This worried PPD. They weren't sure what to do. They couldn't have Dr. Menninger in a position where she exposed herself to significant risk of physical harm, but they still needed to run a business. This was confusing for them. They wanted to help her, but they still needed to run their business.

From Dr. Menninger's perspective, the company had three options. First, she thought they should never have asked her to do these things that were clearly part of her job, and then she thought that if they did ask her to do these things, they should actually have someone else spoke for her, come to the meeting, speak to the customers, and that she would prepare slides from Massachusetts for someone else to present to the customers. And when they said they couldn't do, that they needed her to actually do this job, then she wanted them to forget everything her doctor said, forget about the terrible symptoms that her doctor described, and say, actually, it's okay, I can do all the parts of my job.

The company was legitimately confused. Can you do the job safely? Can you not do the job safely? What is it that you actually want? So were the conversations perfect? Were they scripted by lawyers? No. They weren't perfect, ideal conversations, because the company was confused, and

they were trying to help Dr. Menninger and follow her doctor's instructions, and at the same time, run a business. It wasn't easy.

There's one thing that's clear, though. They had Dr. Menninger's best interests at heart the whole time. Remember. Dr. Menninger herself testified, no one ever said anything negative to her about having a disability. And this is the same company that, when she came forward and said my daughter is having challenges, my daughter is distressed, my daughter is being bullied, they said, no problem, move across the country with your family.

Yet, again, when it was Dr. Menninger herself, the company didn't say anything negative to her about her mental health challenges. They respected her greatly because of her professional background and what she offered to the company, and they just wanted to help her.

But, in fact, no matter what PPD did, Dr. Menninger was never satisfied. She had convinced herself that PPD was out to get her the second she disclosed her disability in January of 2018, before PPD even had a chance to help. And when PPD told her that they could do some, but not all, of what her doctor had asked for, that still wasn't good enough. When she desperately asked them what will happen if I can't do my job? What will happen if my mental health condition stops me from doing what you need, they said don't worry, we

will probably help you be a consultant or work out an exit package. Don't worry.

Mr. Hannon wants you to believe that that was the company trying to push her out. But actually the company was trying to help her figure out how to navigate this difficult situation, and no matter what they said, she thought they were out to get her.

And then she blamed them for assuming that she couldn't do her job, but it was her doctor who said, "She cannot tolerate the job." Again, PPD's hands were tied. Nothing they did seemed to please Dr. Menninger.

When Dr. Menninger said that Mr. Mekerri was being unfair to her, the company immediately jumped in with an investigation, in May of 2018. Mr. Hannon wants you to believe that PPD's investigation of Dr. Menninger's complaint of unfair treatment was a sham. A sham investigation is a legal term and you'll hear from Judge Sorokin, there's a legal standard to be a sham. This simply doesn't apply here. No investigation is perfect. Certainly hindsight is 2020. We can all sit here now and we can look at ways that it could have been better. Sure. That's how life works. Us sitting in a courtroom five years later can say these are all the ways things could have been done better. But you heard testimony about how this investigation lasted for two weeks, involved -- actually, more than two weeks, involved the input

of multiple witnesses, review of documents. Human resources met with Dr. Menninger three times, more than they met with any other witness. Dr. Menninger had an opportunity to provide her side of what happened, any information about what she thought witnesses knew. HR followed up on that.

The past two weeks, we've spent a lot of time looking at that investigation, pouring over the details. Whether it was perfect isn't the question. But was it a sham? It went on for multiple weeks, involved multiple witnesses, and a lot of documents. What Dr. Menninger didn't like about it was the conclusion. She didn't like that the investigation found that Mr. Mekerri hadn't been unfair. Again, she didn't like the conclusion, but that does not make the investigation a sham.

Mr. Hannon also wants you to believe that PPD's e-mail about a focus on the desire to keep the lab running, to keep quality levels high, to keep the business accountable to customers are somehow evidence of a scheme to remove Dr. Menninger from her job. In fact, the company was terrified that Dr. Menninger would leave her job. And as you've heard from multiple witnesses, if Dr. Menninger left her job, if Dr. Menninger wasn't available to license the lab, they couldn't operate their business. There are no second chances. They had tissue samples, blood samples, patient blood samples in the lab that couldn't be tested if

Dr. Menninger didn't give the lab licensure. That was critical to the company. They didn't want Dr. Menninger to leave, but they needed a plan in case she did. It would have been imprudent of them not to have some type of plan once they understood that Dr. Menninger might not be able to do her job.

Most likely, each and every one of you, and all of us in this courtroom have written e-mails five, six years ago, that could be misinterpreted now by a room full of strangers. You can put e-mails up in different orders and show you parts of one e-mail or another e-mail, and without context, they might look terrible. Sure. That's Mr. Hannon's job to make you think that some of the e-mails in this case were designed with malicious intent toward Dr. Menninger, but it's just not the truth.

You've seen that Dr. Menninger -- that Dr. Menninger wasn't fired. She wasn't disciplined. In fact, she went out on a medical leave that lasted for eight months, and during that time, the company patched together different people to cover the licensure of the lab. They didn't fire her. They were hoping that she would come back. So when they talked about an exit, when they talked about what would happen if she left, that was important to them, because her job wasn't easily replaceable. They needed to know what would happen and how to plan for that. That's not

retaliation, that's not discrimination. That's just good business planning. And you heard witnesses talk about how they don't have a choice. They always have to be in that mode. Because if they don't have a pathologist to run the lab, they can't run a business.

Let's talk about what else was happening at this same time. We've heard Mr. Hannon himself was advising and directing Dr. Menninger's psychiatrist through this whole time period. Dr. Menninger's psychiatrist and Mr. Hannon actually started talking about Dr. Menninger taking a leave weeks before she did. This was all going on in the background, being orchestrated to set PPD up for failure. Dr. Menninger's psychiatrist herself said, and it's in the notes that you have access to when you go back to the jury room, that the timing of the leave actually would allow Dr. Menninger to participate in an ultra marathon walk with her friends. Dr. Menninger's psychiatrist also sent Mr. Hannon an e-mail saying that she, herself, regretted the language that she had use in the accommodation letter. Mr. Hannon knew that, Dr. Menninger knew that, but PPD never knew that. No one ever sent a followup letter to PPD to say, actually, forget it. We don't need those accommodations.

And Dr. Kessimian never sent another letter saying maybe you can try some other accommodations. As Mr. Hannon just said himself, the only accommodations that you can

consider are the ones that Dr. Kessimian herself recommended in black and white, meaning hire a surrogate to do the key parts of Dr. Menninger's job. Mr. Hannon says now that Dr. Kessimian's real request for accommodation was just minimize the amount of public speaking.

But you've seen the documents. You've seen so many times in this courtroom, the letter from February 14th, that Dr. Kessimian herself wrote, saying you need to have a surrogate, someone else, do these key parts of Dr. Menninger's job.

When Dr. Menninger went out on leave, PPD scrambled to cover the management of the lab. The leave started here. They didn't actually hire someone new until here. Months after Dr. Menninger's medical leave ended. They patched together that coverage. Does it make any sense that a company that wanted to push her out of her job didn't hire someone new for months after she went out on leave, and in fact, months after her leave ended and she was on Social Security benefits? That doesn't make any sense. Think logically about that. If the company wanted to push her out, if the company had someone in the wings that they wanted to put in place instead, they would have hired that person before April of 2019. It just doesn't make sense.

And again, Mr. Hannon can't point to any decision to terminate or discipline Dr. Menninger. It just didn't

happen. I'm sure that during this trial, you are waiting for that uh-huh moment of, oh, this is when she was disciplined. This is when she was fired. But it just never happened. The company continued to try to support Dr. Menninger. It was confusing. They weren't sure if she could do her job or couldn't do her job, what she wanted from them. And they tried their best. In fact, they kept Dr. Menninger's job open for her for eight months. And only then, when she said I'm not coming back, did they say, okay, now we have to hire someone new.

In just a little bit, Judge Sorokin will give you a list of questions that only you, members of the jury, can consider.

You clear away all the noise, all the excitement, and all the distractions that Mr. Hannon has worked so hard to create, here is what you'll see through the evidence.

First, for Dr. Menninger's claim that PPD wrongfully denied her accommodation request, based on the statements of her own doctor, and the letters that that doctor wrote to PPD, it was clear that Dr. Menninger could not perform the essential functions of her job as an executive in the company, starting in January of 2018, way back here. That's just black and white. It's in Dr. Kessimian's notes. And not only that, but you heard Dr. Menninger's husband's testimony that she couldn't get out

of bed starting in January of '18. That is very sad. No one wants to hear that, but that's not anything that PPD did.

The accommodations that Dr. Menninger's doctor asked for in writing, plain and simple, were not reasonable. Just because a lawyer stands up in the courtroom and tells you they were reasonable, and just because Dr. Menninger says she really wanted those accommodations, that doesn't make them reasonable. The Judge will give you instructions about what is a reasonable accommodation. Dr. Menninger was an executive at PPD. She was the highest level person running a lab, in fact, a global set of labs. If she could not present to people, could not talk to her colleagues, company leadership, customers, she couldn't do the job. An accommodation that asked to excuse her from those obligations, that's not reasonable.

PPD didn't have a legal obligation to hire a surrogate to do major parts of Dr. Menninger's job in her place. The Judge's instructions will tell you exactly that an accommodation is not reasonable if it requires shifting any of the essential functions to another person. Again, shifting essential functions of a job to another person, that is not something PPD had to do under the law.

The accommodations requested by Dr. Menninger's doctor and rejected by PPD would have placed a burden on the company that the law does not require. PPD's lab business,

at its core, as we heard from everybody who testified, including Dr. Menninger herself, relies on a doctor to license the lab. The job involves marketing to customers, answering customer questions, presenting to company leadership. They cannot operate the lab if they don't have an executive director of labs who can do those things.

The lab leader's visibility is critical to the business. With her requested accommodations, Dr. Menninger was asking PPD to compromise its ability to run its business. That is an undue burden under the law, as you will hear from the Judge, and not something that PPD needed to do.

To be clear, this means that you can and should find that PPD did not discriminate against Dr. Menninger by not granting her the accommodations that she and her doctor requested.

Second, for Dr. Menninger's claim that PPD took an adverse action against her, based on her disability. Asking Dr. Menninger to do people-facing presentations and interact with customers was not an adverse action. The evidence is clear that PPD told Dr. Menninger that she would need to do this here (indicating) before she ever disclosed her disability. In addition, all the company ever did was ask Dr. Menninger to do her executive level job. She didn't feel comfortable doing what she was being asked to do, but that's all the company asked her to do.

In addition, we heard that the company was asking all of its executive directors to do this at that time. The business was expanding, they were growing. They were working with more customers. They needed their executives to be boots on the ground with customers. It wasn't just about Dr. Menninger. And again, they told her she was going to need to do this here (indicating), before she disclosed a disability to them.

There is simply no evidence that PPD somehow targeted Dr. Menninger or treated her differently because she disclosed a disability when they told her you need to be more present, you need to be in the lab where you were hired to work, and you need to be present with customers.

Mr. Hannon just tried to convince you that -- describing five buckets of job tasks was, itself, somehow cold and icing out Dr. Menninger. This doesn't make any sense. We've seen evidence that it was Dr. Menninger who said, "Tell me more about what this job entails. Tell me more about how you need me to interact with people." So the company did that. They gave her a list of things that she needed to do that involved public-facing interactions and social interactions, exactly as she asked, exactly as her doctor said we need. And once they did that, now, five years later, Mr. Hannon is saying that was somehow icing out Dr. Menninger. It wasn't icing her out. It was giving her

the information that she asked for. Giving her that information that she could take back to her doctor and talk to her about. In fact, if PPD hadn't done that, then Dr. Menninger would have been saying that was wrong, too. They just gave her the information that she asked for.

Asking Dr. Menninger to be accountable for the lab's functioning and meet business goals was not an adverse action. You saw that Mr. Mekerri asked his other executive directors to do exactly the same thing. You even saw e-mails. The e-mails that Mr. Hannon showed you, they weren't only directed to Dr. Menninger. They were also directed to the other executive directors. Everyone needed to make sure that they were stepping up their business objectives, that they were doing what the customers needed. It wasn't only Dr. Menninger.

And again, as you saw, no one made Dr. Menninger do the things she said she couldn't do or her doctor couldn't do. They said these are the business directives; these are the goals. We need you as an executive to be held accountable and hold your people accountable and help us meet them. There's nothing discriminatory about that.

The lab had increasing quality problems. Customers were complaining. You heard this from three different PPD witnesses, including witnesses who don't work for the company anymore, have no vested interest in the outcome of this case.

They all told you, and the e-mails speak for themselves, there were customer complaints. No one fired Dr. Menninger. No one disciplined Dr. Menninger. No one told her it was all her fault. They just said, "You're an executive. You have to hold your people accountable, help us fix this." That's all the company did. There's nothing wrong with that. They have to be able to run their business. If they couldn't tell Dr. Menninger, "We need you to work with us to help fix these problems," they couldn't run their business.

And if the company had wanted to set up Dr. Menninger for failure, why didn't they tell her she could no longer live remotely? Let's think about that imaginary scenario for a minute. If the company was trying to set up Dr. Menninger to make it so that she couldn't function as she disclosed her disability, and they felt that she wasn't leading in the lab, that she wasn't there with her people, why didn't Mr. Mekerri say, you know what, we're revoking your remote work status, come back and live in Kentucky? They never said that. They just said you have to hold your people accountable, you have to be accountable, help us fix these problems.

You also heard no evidence to tell you that PPD's reasons for asking Dr. Menninger to do these things wasn't truthful. You heard multiple witnesses sit here and talk about how all of the executive directors were asked to do the

same thing. And in fact, the current medical director today is also asked to do those things. You have no reason to doubt that this is simply part of PPD's business model.

Next, for Dr. Menninger's claim of retaliation, there is no evidence that PPD tried to somehow coerce Dr. Menninger to quit her job. Sure, Mr. Hannon has thrown a lot of e-mails in front of you to make you think that's what PPD was doing, but let's think about it for a minute. The company never disciplined her. They didn't tell her she had to move her family back from Massachusetts. They didn't fire her. In fact, you heard multiple levels of management, including people who don't work for the company anymore, talk about how contrary to wanting her to leave, even the person who sent that e-mail about what is the exit plan, he said in that chair, Mr. Fikry, and he told you, that was just about planning. We need to know if the medical director isn't going to be here, because we have to plan for that. We cannot run this business without a medical director.

And think about it logically. Would they have waited all this time to hire a new medical director if they wanted to push her out? If PPD was somehow trying to retaliate against Dr. Menninger for telling them she had disability, they should have been right on it. Hiring someone new immediately when she left and trying to offer her a package then. They didn't do that. They let her stay out

on leave for eight months before they hired someone new.

And there's no evidence that the company excluded Dr. Menninger from hiring and recruiting decisions. Simply never happened. Dr. Menninger herself told you that in November of 2017, way back here (indicating), she told her boss that she was having trouble doing all her work. That was Dr. Menninger's own report. She sat here and testified about that. We've seen the evidence that Mr. Mekerri was trying to help her out by taking over the recruiting efforts. And when PPD was ready to make offers, they included her, and they asked for her input.

Also, let's take a step back and think about whether this makes any sense. Mr. Hannon is asking you to find that Dr. Menninger should have been included in hiring meetings and interviews, during the same time that her doctor said it would harm her to have more interactions with strangers. If Mr. Mekerri had asked her to do that interviewing, had asked her to do the recruiting, we would be here with Dr. Menninger actually telling us that that was the problem. Again, whatever PPD did was never good enough for Dr. Menninger. She just wasn't happy. None of their decisions seemed to please her.

Finally, there's no evidence that PPD did a sham investigation when Dr. Menninger complained about doctor -- Mr. Mekerri's treatment. As I said earlier, was the

investigation perfect? Of course not, but that's not the legal standard. This investigation was not a sham and it was not retaliation. Plain and simple.

Now let's talk about what Mr. Hannon is asking you to do with damages and why it is simply wrong. The events you heard about in this case happen five years ago. Dr. Menninger last actively worked at PPD five years ago. A lot of time has passed. Many of the key players in this case, other people who used to work for the company, they don't work for the company anymore, either.

When Dr. Menninger last worked at PPD, COVID hadn't happened, Putin hadn't invaded Ukraine, the world was a different place. But Mr. Hannon wants you to believe that everything bad in Dr. Menninger's life, everything that has happened in the last five years, it all rests on the shoulders of PPD. That doesn't make very much sense, does it? Mr. Hannon doesn't stop there. Once he's done trying to put PPD on the hook for all the bad things over the last five years, he wants you to find that PPD is responsible for paying Dr. Menninger's wages and benefits until 2036.

Think about that. 2036. It's now 2023. That means Mr. Hannon is asking you to decide that even though Dr. Menninger only worked for PPD for a few short years, PPD should pay her wages until she would have retired, and that that might not be until 2036. Dr. Menninger turned 50 in the

last year that she worked for PPD, and Mr. Hannon wants you to say that PPD should pay her wages until she would retire at the age of 67.

Now, let's look at what we do know about Dr. Menninger, and consider whether that makes any sense. After her medical training, Dr. Menninger worked in the field of pathology for a total of 12 years. Dr. Menninger worked as an executive director at PPD for less than three years. Dr. Menninger is a licensed medical doctor. She has specialized training as a medical pathologist. She went to medical school and completed a residency program. And, despite what she claims and all of the sadness that she reports in this case, she flew here from Oregon, where she lives now. She stayed in a hotel and she sat in this courtroom for two weeks. She spoke to all of you from the witness stand, clearly and thoughtfully for the majority of last week. And she did so, even with streams of high school students walking in and out of the room.

Is that somebody who can't work from now until 2036?

Mr. Hannon wants you to conclude that Dr. Menninger cannot work at all during that time. That doesn't seem right. Should PPD pay her until 2036?

Above all else, Mr. Hannon is asking you to speculate. In fact, the Judge will specifically instruct you

that you cannot speculate in awarding damages in this case. It must be proven with reasonable certainty that those damages are payable. That did not happen here. Dr. Menninger actively worked at her executive role for less than three years. She worked in her last job before PPD for five years, and the job before that, for four years. She's never stayed in a job for more than a handful of years. Yet, Mr. Hannon wants you to award her pay for 18 years.

Well, that would be a nice story to tell, there's simply no evidence to support such a speculative award. He has presented no evidence to show that if PPD had done something different, Dr. Menninger could have continued at PPD or in a similar job for 18 years. In fact, the only evidence we do have is that Dr. Menninger has only stayed in each job for a handful of years.

Mr. Hannon also wants you to speculate that even though, as Dr. Menninger's own husband testified, she could barely get out of bed in January of 2018, she would have been able to continue to work as an executive at PPD, directing a lab in Kentucky, through three years of the COVID pandemic, and for years to come. We heard just the other day from the current head of the lab business that the medical director now goes to work, in person, in Highland Heights, Kentucky, every day. He actively leads and manages the lab staff, meets with customers to present business proposals, and

answer medical and scientific questions, and presents to company leadership. These were all things that Dr. Menninger's own doctor said she was not able to do. And that was in January of 2018, before even she claims PPD did anything wrong.

And remember that even when Dr. Menninger was still employed by PPD, she moved multiple times. She doesn't live in Massachusetts, anymore, she doesn't live in Kentucky, she moved to New Mexico, and then she moved twice within Oregon. Dr. Menninger is no longer in a position where we can believe she would have been doing this job at PPD for years to come.

Next, Mr. Hannon wants you to speculate that, despite Dr. Menninger's anxiety disorders, agoraphobia, and panic attacks that are triggered just at the thought of answering the door, picking up the phone, that she would have remained in an in-person job in Highland Heights, Kentucky through the business's continued expansion, and three years of a global pandemic. While lots of jobs allow people to hunker down in their basements during a pandemic, this is not one of them. The current medical director was there in person on a regular basis throughout the heart of COVID. The person in charge of the business testified that this was actually critical, even when the pandemic raged. Why? Because the blood, tissue, and tumor samples of patients don't wait, and they don't give second chances.

The evidence is clear that Dr. Menninger could not work in Highland Heights, even in January of 2018, and there's simply no question that this wouldn't have gone on through the pandemic with Dr. Menninger able to go and work in-person in the lab.

Mr. Hannon also wants you to speculate that Dr. Menninger would have stayed on as executive director through the departure of her former manager Hacene Mekerri, who hasn't worked for the company for years, and PPD's eventual sale to Thermo Fisher. Can we really speculate about whether she would have stayed in the job through those changes?

We heard about the clear expectation that the medical director of working person would have near constant dialogue with senior leadership and customers, and we have heard no evidence at all that Dr. Menninger could or would have stayed employed through those changes. Plain and simple.

We even heard that the only salary increases for medical directors have been modest, just a little bit to account for cost of living adjustments. But Mr. Hannon wants you to believe that, in a hypothetical world, Dr. Menninger would have a base salary completely out of whack with what the current medical director was making --

THE COURT: Ms. Mandel, five minutes.

MS. MANDEL: Thank you. You heard Dr. Menninger's expert say that his calculations didn't even account for whether PPD's business would be sold. His calculations were speculation that ended several years ago, before the most recent changes.

We also heard the testimony of Dr. Menninger's husband that both he and Dr. Menninger have stayed home with their daughter, and that they have no plans to change that. They both work to homeschool their daughter. Yet, Mr. Hannon wants to you speculate that if PPD had done something different over a few brief months in 2018, somehow Dr. Menninger would have stayed in an executive level job, running a global set of labs.

Perhaps most importantly, Mr. Hannon is asking you to assume that there is no comparable work that Dr. Menninger can do, even now. She testified that she has not explored working as a clinical pathologist in a home-based role, something that wouldn't require her to ever leave her basement. You heard no testimony about her attempts to do that because she hasn't.

These are huge assumption and they don't make any sense. Dr. Menninger is trained as a clinical pathologist. She worked, for a few short years, in industry, trying a job that was not compatible with her needs, but that doesn't mean she can't work as a pathologist between now and 2036. And in

fact, she has made no efforts to try.

Mr. Hannon wants you to give Dr. Menninger money for what she claims are her lost wages from 2018 to 2036. Think about whether that makes any sense. He also wants you to give Dr. Menninger money for what she and her team have decided her stock options and her equity might be worth today. In fact, you've heard almost no actual evidence about this, just a couple of documents, but no witnesses have even been able to say what that would have been worth. In fact, Dr. Menninger's own economic expert sat right there yesterday and told you that he, himself, was told not to consider the value of those options in writing his report.

I don't think you have enough information to say what Dr. Menninger's equity would be worth today. I know I don't.

There is no question, Dr. Menninger has had a lot of sadness in her life. In her childhood, she, her mother, and her sisters escaped an abusive father, they moved across the country from Georgia to Wisconsin to get away from him. Dr. Kessimian described this as trauma in Dr. Menninger's life. She has long struggled with anxiety and panic attacks. They were severe before she ever worked at PPD. She couldn't even go to children's birthday parties without having a panic attack. And we heard that Dr. Menninger's daughter was bullied and had a lot of emotional turmoil throughout her

childhood into adolescence. This is all very sad. This is all reason that Dr. Menninger's life has been difficult, but it's not on the shoulders of PPD.

Dr. Menninger's own therapist in Oregon has described her as having paranoia about PPD and her work there. All of her therapists note that she focuses intently on PPD and this case. Her own husband talked about that in his testimony. That is difficult for Dr. Menninger. There's no question about it. But that does not entitle her to money from PPD now.

Even if PPD had some missteps here and didn't always say the right thing, you heard from the company's witnesses that they just wanted to help her. This is the same company that let Dr. Menninger move across the country when that's what her daughter needed. It's the same company that let her stay out on medical leave for eight months. They're not evil. They're not malicious. They didn't act with indifference to her legal rights --

THE COURT: One minute.

MS. MANDEL: They didn't know what to do and they did the best they could.

Why does this matter? Because Dr. Menninger is here, asking you to award her more money than most of us will ever see in our lives. You need to think about whether that makes any sense, whether you've seen any evidence to support

that request, that claim.

Members of the jury, we submit to you that you haven't seen that evidence. We thank you for your service and request that you return a verdict in PPD's favor. Thank you.

THE COURT: Thank you, Ms. Mandel. I remind you, ladies and gentlemen, what the lawyers have to say can be persuasive and helpful, but it's not evidence, and you decide what the evidence is and what it shows.

So Mr. Hannon gets a brief rebuttal.

You have three minutes, Mr. Hannon.

MR. HANNON: Three minutes. Can I start when I get my microphone on?

THE COURT: Yes.

MR. HANNON: Feel free to hit the buzzer when I hit three.

THE COURT: I'll tell you while he's getting ready, so each side gets 45 minutes. So it's a question of -- there's a limit. Mr. Hannon can't say I'll do five minutes and reserve 40 for rebuttal, when he needs to go first, it's supposed to be a rebuttal, a response, so it depends on how much time he spends on the first round, so that's why he gets three.

Ready to go?

MR. HANNON: Ready.

REBUTTAL ARGUMENT BY COUNSEL FOR PLAINTIFF

MR. HANNON: So what was the light switch? Remember the testimony from Dr. Martin yesterday? What was the light switch that put Dr. Menninger in this state? It wasn't her daughter getting bullied. It wasn't the trauma that she suffered as a child. It wasn't her cat dying, as you heard them question her husband about extensively. It wasn't President Putin invading Ukraine. It was PPD. It was what they did in response to her after she took that risk; after she exposed herself to them; after they rejected her, after they humiliated her, after they subjected her to her worst fears. That was the light switch. Don't take my word for it. Take their expert's word for it.

There's some allegation here that some of these e-mails have not been presented to you fairly or somehow these are being misinterpreted. You'll have them back out there. I invite you to look at Joint Exhibit 167. That's going to be the draft e-mail that Mr. St. John sent to Ms. Ballweg following the 2/28 meeting. Joint Exhibit 186. That's the one about delicately working Lisa out. Joint Exhibit 109. This is going to answer the question about why did they wait to officially hire Dr. Kashlan to replace her. You're going to see Ms. Ballweg instructs Mr. St. John to try before you buy. Let's bring him on board in a smaller role, see how you like him before we officially hire him and commit

to him.

Joint Exhibit 332, that's the exchange from Dr. Fikry. You heard Ms. Mandel characterize that. She characterized it as what is the exit plan. That's not what he asked. He didn't ask what is the exit plan. He asked when is the exit. It wasn't a matter of if she was going to exit, it was a matter of when.

Joint Exhibit 194, that's critical in terms of understanding what those buckets are that Mr. Mekerri came up with.

Joint Exhibit 126. You're going to see when they were doing this criticism towards the end of her employment, when they were changing these goals, they were telling her, you're not meeting expectations. You're failing. The fact that these errors are happening are your fault. We're going to hold you accountable and you'll see it there in that document.

THE COURT: Just over 30 seconds.

MR. HANNON: Joint Exhibit 394, that's going to answer the question regarding equity. She made the reference regarding the husband's testimony about January. You recall he clarified that. It was early 2018, some time after a meeting. He told you he wasn't good with dates.

You've seen this for two weeks. Right? She has seen this for five years. Seeing what they've done over the

last two weeks, you've seen how they've lied, how they've mischaracterized things, how they've trying to avoid responsibility. It's not speculation to give her damages. It's not speculation to --

THE COURT: Mr. Hannon.

MR. HANNON: She's done her part and I ask you now to do yours.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Hannon.

Same reminder, arguments of counsel can be persuasive, but they're not evidence.

JURY INSTRUCTIONS

THE COURT: All right. That brings us to the last part, which are my instructions to you.

So you'll have, in the jury room a document -- first of all, you'll have a written copy of what I'm reading to you, and when you'll go to the jury room, you'll have one copy of what I'm reading to you, but you will be -- I will be printing 11 additional copies of the instructions, and you'll get them however fast the printer is, essentially. So a few minutes after, so you know that that's coming. So then you just have -- you each have your own copy and it makes it a little easier.

So I want to turn to the principles of law that govern the specific claims and defenses made in this case.

Dr. Menninger has presented three claims for your decision. First, she alleges she faced disability discrimination because PPD, her employer, failed to provide her with a reasonable accommodation. Second, she alleges that she faced disability discrimination because she experienced disparate treatment based on an adverse employment action PPD took against her. And third, she alleges PPD retaliated against her for requesting an accommodation for a disability.

And I'll now explain the elements of each of these claims one by one.

Claim 1 is the disability discrimination for failure to reasonably accommodate. Federal law and Massachusetts law both require employers, upon request, to provide reasonable accommodation to employees who are disabled, unless the accommodation would impose an undue hardship on the employer. To succeed on her claim that defendant engaged in disability discrimination by failing to provide her with a reasonable accommodation, plaintiff need not show that defendant had discriminatory intent, but she must instead prove by a preponderance of the evidence all of the following.

First, Dr. Menninger had a disability within the meaning of anti-discrimination laws.

Second, Dr. Menninger was a quote/unquote,

qualified individual for the job, meaning that she both, one, possessed the necessary skill, experience, education, and other job related requirements for the position of executive director for defendant's Global Central Labs, and two, could have performed the essential functions of the executive director position with or without reasonable accommodation.

Third, that Dr. Menninger made a request for an accommodation that was sufficiently direct and specific so as to put the employer on notice of the need for that accommodation.

And fourth, the accommodation that Dr. Menninger requested was, quote/unquote, reasonable, and PPD failed or refused to provide the requested accommodation.

If Dr. Menninger proves all four of these elements by a preponderance of the evidence, then PPD bears the burden of proving, by a preponderance of the evidence, that the accommodation Dr. Menninger proposed would have been an undue hardship on PPD.

First, Dr. Menninger must prove that she had a disability within the meaning of anti-discrimination laws. Dr. Menninger suffered a disability if any of the following are true:

One, she suffered from a physical or mental impairment, that quote/unquote, substantially limited one or more of her, quote/unquote, major life activities.

Two, she had a record of such impairment.

Or three, she was regarded by PPD as having a physical or mental impairment.

A physical or mental impairment is any psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

Or two, any mental or psychological disorder such as intellectual disability, formally termed -- formally termed, quote/unquote, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term major life activity includes, but is not limited to:

Caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

And the operation of a major bodily function, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive,

genitourinary, bowel, bladder, neurological brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

The requirement that a disability substantially limit a major life activity is not intended to be a demanding standard and the phrase should be construed broadly in favor of expansive coverage. An impairment need not prevent or significantly or severely restrict the individual from performing a major life activity in order to be considered substantially limiting. Further, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The non-ameliorative effects of mitigating measures, such as negative side effects of medication, or burdens associated with following a particular treatment regime may be considered when determining whether an individual's impairment substantially limits a major life activity.

In determining whether an individual has a disability, the focus is on how major life activity is

substantially limited and not on what outcome an individual can achieve. For example, someone with a learning disability my achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

An individual meets the standard for, "Regarded as having" a physical or mental impairment, if the individual establishes that she has been subjected to unlawful discrimination because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity.

The second element Dr. Menninger must prove is that she was a qualified individual for the job under the law. As stated above, in order to be a qualified individual, Dr. Menninger must prove by a preponderance of the evidence that she both, one, possessed the necessary skill, experience, education, and other job-related requirements for the position of executive director for defendant's global labs. And two, could have performed the, quote/unquote, essential functions of the executive director position at the time that PPD took the alleged adverse employment action against her, with or without reasonable accommodation. While Dr. Menninger bears the burden to prove by a preponderance of

the evidence these two requirements to be considered a qualified individual, PPD bears the burden to prove by a preponderance of the evidence what the essential functions of Dr. Menninger's position were.

If an employer has a concern about whether an employee with a known disability can perform her job, the law permits the employer to make inquiries about the employee's ability to perform job-related functions. Permissible inquiries include asking for a medical certification from the employee that the employee is able to perform essential job functions with or without accommodation. Additionally, if the employer has a reasonable belief, based on objective evidence, that a medical condition will impair an employee's ability to perform the essential functions of her job, then the employer may require the employee to submit to an independent medical examination. The law imposes no limits on what information an employee can provide to an employer regarding her disability, medical conditions, or ability to perform job-related functions.

The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal, that is, nonessential functions of the position. In determining the essential functions of the plaintiff's job,

you may consider the plaintiff's job description, as well as the nature of the employer's particular business. You may also consider, one, the employer's judgment as to which functions of the job are essential; two, the amount of time spent on the job performing the function in question; three, the consequences of not requiring a person to perform the function; four, the work experience of people who have held the job; five, the current work experience of people in similar jobs; six, whether the reason the position exists is to perform the function; seven, whether there are a limited number of employees available among -- available -- a limited number of employees available for the performance of the function that can be distributed; eight, whether the function is highly specialized and the individual in the position was hired for his or her expertise or ability to perform the function. No one factor is necessarily controlling. You should consider all of the evidence in deciding what functions, if any, PPD has established, by a preponderance of the evidence, were essential functions of Dr. Menninger's job as executive director of PPD's Global Central Labs.

A reasonable accommodation is a modification or adjustment to the work environment or to the manner in which a job is performed. A reasonable accommodation enables a plaintiff to perform the essential functions of her job. Or a reasonable accommodation is something that alleviates the

added stress, difficulties, and other disadvantages that arise from a disability, even when the employee can perform the essential functions of the job without the reasonable accommodation. In all cases, a reasonable accommodation must be feasible for the employer to provide under the circumstances, at least on the face of things.

Please refer to the section coming up under Element 4 for further explanation of what qualifies as a reasonable accommodation.

The third element is -- regards sufficiently direct or specific requests. As to each accommodation she seeks to prove was reasonable but denied to her, Dr. Menninger must prove she made a request for that accommodation that was sufficiently direct and specific so as to put the employer on notice for the need of that accommodation. Any accommodations not sufficiently requested at the time of the underlying events cannot be considered as possible reasonable accommodations for purposes of this claim.

In other words, when you move on to the fourth element below, you may only consider those accommodations you believe were requested in a sufficiently direct and specific way so as to put the employer on notice of the need for that accommodation, and you may not consider any potentially reasonable accommodations that Dr. Menninger did not sufficiently request from PPD at the time of the underlying

events.

Fourth, or the fourth element, Dr. Menninger must prove that the accommodation she requested was reasonable. In evaluating this, you'll refer back to the definition I read to you a moment ago under Element 2. Dr. Menninger must also prove -- as well as the factors I describe in a moment. Dr. Menninger must also prove that PPD failed or refused to provide the requested accommodation.

Depending on the circumstances, a reasonable accommodation might include, among other things, one, modifying or adjusting a job application process to enable a qualified applicant with a disability to be considered for the position; two, making the existing facilities used by employees readily accessible to and usable by persons with disabilities; three, job restructuring; four, a part-time or modified work schedule; five, reassignment to a vacant position; six, acquisition or modification of equipment or devices; seven, the adjustment or modification of examinations, training materials, or policies; eight, modifying when and how an essential job function is performed; nine, altering, reassigning, or eliminating nonessential job functions; or ten, the provision of qualified readers or interpreters. Whether something is a reasonable accommodation is a determines you make based upon your consideration of all the surrounding circumstances.

An accommodation is not reasonable if it requires eliminating or excusing an inability to perform any essential functions of the job, if it requires shifting any of the essential functions of the job to other employees, if it requires creating a new position for the disabled employee, or if it creates an undue hardship for the employer.

Finally, as to any requested accommodation you find to be reasonable, you must determine whether PPD failed to provide that accommodation to Dr. Menninger.

Undue hardship. If you find Dr. Menninger has proven by a preponderance of the evidence all four elements of this claim, you must consider whether the reasonable accommodations that you found PPD failed to provide imposed an undue hardship on PPD. On this question, PPD bears the burden to prove that all of the accommodations that you found were both reasonable and not provided by PPD imposed an undue hardship.

An accommodation imposes an undue hardship if it would create significant difficulty or expense for PPD, considering the nature and cost of the accommodation, the overall financial resources of PPD, the effect of the accommodation on expenses and resources, and the impact of the accommodation on the operations of PPD. This last consideration, the impact of the accommodations on PPD's operations includes the accommodation's impact on the ability

of other employees to perform their duties, and the impact that the accommodation has on PPD's ability to conduct its business.

If you find that there was at least one reasonable accommodation, that satisfied all of the elements above, but that did not impose an undue hardship on PPD, then that reasonable accommodation can support liability on this claim, even if other reasonable accommodations would impose an undue hardship. In other words, for PPD to win this claim based on undue hardship, they must show that all, not just one, of the reasonable accommodations sufficiently requested by and denied to Dr. Menninger would have imposed an undue hardship.

Now I'm going to give you a summary of some of the -- of the questions that you'll need to think about in order to resolve the first claim, which is the discrimination based on failure to reasonably accommodate.

One, did Dr. Menninger prove by a preponderance of the evidence that she had a disability within the meaning of anti-discrimination laws?

Two, did Dr. Menninger prove by a preponderance of the evidence she possessed the necessary skill, education, experience, and other job-related requirements for the position of executive director of defendant's Global Central Labs?

Three, did Dr. Menninger prove, by a preponderance

of the evidence, she could have performed the essential functions of the executive director position with or without reasonable accommodation? PPD bears the burden to prove by a preponderance of the evidence which functions of the executive director position were essential.

Four, did Dr. Menninger prove, by a preponderance of the evidence, she made a request for accommodation that was sufficiently direct and specific so as to put PPD on notice of the need for that accommodation?

Five, did Dr. Menninger prove by preponderance of the evidence that one or more of the accommodations you found that she sufficiently requested was reasonable?

Six, did Dr. Menninger prove by a preponderance of the evidence that PPD failed to provide at least one accommodation that you found to be both reasonable and sufficiently requested?

If you answer to -- if your answer to one or more of Questions 1 to 6 above is "no," then you must answer "no" to Question 1 on the verdict form.

And Question 1 is your resolution of this claim.

If your answer to all of Questions 1 to 6 above is "yes," then you must answer "yes" to Question 1 on the verdict form, unless you find that for all of the accommodations you found to be reasonable, sufficiently requested, and denied to Dr. Menninger by PPD, that PPD has

proven, by a preponderance of the evidence, that all of these accommodations would have imposed an undue hardship on PPD, in which case you answer "no" to Question 1.

Claim 2. Dr. Menninger also accuses PPD of discriminating against her based on her disability by taking adverse employment action against her. To succeed on this claim, Dr. Menninger must prove by a preponderance of the evidence all of the following:

First, Dr. Menninger had a disability within the meaning of anti-discrimination laws.

Second, she was a qualified individual for the job, meaning that she both possessed the necessary skill, experience, education, and other job-related requirements for the position of executive director of defendant's Global Central Labs, and could have performed the essential functions of the executive director position at the time that PPD took the alleged adverse employment action against her, with or without reasonable accommodation.

Third, that PPD had knowledge of Dr. Menninger's alleged anxiety disorder at the time it took the alleged adverse employment action against her.

And fourth, that PPD took an adverse employment action against Dr. Menninger and that PPD did so in whole or part because of her disability.

First, Dr. Menninger must prove she had a

disability within the meaning of the anti-discrimination laws. Here you refer back to the definition I already gave to you on the first claim.

Element 2, which is qualified individual, you refer back to the definition of qualified individual provided under Claim 1, Element 2. The same definition here.

Knowledge, which is the third element, Dr. Menninger must prove, by a preponderance of the evidence, that PPD had knowledge of Dr. Menninger's alleged anxiety disorder at the time it took the alleged adverse employment action against her.

Element 4, adverse employment action and causation. Fourth, Dr. Menninger must prove by a preponderance of the evidence that PPD took an adverse employment action against Dr. Menninger and that PPD did so, in whole or in part, because of her disability. Dr. Menninger alleges that PPD's creation of new goals and expectations for her role as executive director was an adverse employment action taken because of her disability.

To determine whether Mr. Mekerri has proven this element, you must first decide whether PPD took an adverse employment action against her. A trivial harm is insufficient. The fact that an employee is unhappy with something that his or her employer did or failed to do is not enough to make that act or omission an adverse employment

action. Likewise, subjective feelings of disappointment or disillusionment concerning an employment action do not constitute an adverse action. Rather, an employer takes materially adverse action against an employee typically when it, one, takes something of consequence away from the employee; for example, by discharging or demoting the employee, reducing his or her salary, or taking away significant responsibilities. Or two, fails to give the employee something that is a customary benefit of the employment relationship; for example, by failing to follow a customary practice of considering the employee for a promotion after a particular period of service.

For an employment action to be adverse, it must have materially changed the conditions of Dr. Menninger's employment, which means that it must be more disruptive than a mere inconvenience, or an alteration of job responsibilities. However, assignment of more difficult job responsibilities, disadvantageous assignments, unwarranted negative job evaluations, or toleration of harassment by other employees could qualify as adverse actions. Likewise, an employee may meet this standard by showing that her employer intentionally assigned new job duties to target her known disability, such as by selecting tasks that would be more difficult due to the disability.

Whether an action is materially adverse should be

judged from the perspective of a reasonable person in Dr. Menninger's position, considering all of the circumstances and the context in which the events took place. For example, a schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young parent with school-aged children.

If you find that PPD took an adverse employment action against Dr. Menninger, you must next determine whether Dr. Menninger's disability was a cause of the adverse action. The definition of "cause" here differs under federal and state law. You will have to determine separately whether she has met her burden under federal and state law.

For this claim, under federal law, you must decide whether Dr. Menninger's disability was a but-for cause for the adverse action you found. To prove that her disability was a but-for cause, Dr. Menninger does not have to prove that disability was the only reason for the adverse action. It is enough if Dr. Menninger proves by a preponderance of the evidence that if not for her disability, the adverse actions would not have occurred.

Under Massachusetts law, you must decide whether Dr. Menninger's disability was a determinative cause of the adverse action. Dr. Menninger's disability was a determinative cause if it contributed significantly to the adverse actions; that is, that it was a material and

important reason for the adverse action. To prove that disability was a determinative cause, Dr. Menninger need not prove that disability was the only reason for the adverse action.

Under both federal and state law, you are permitted to consider the timing and sequence of events when assessing causation. For example, if adverse action is taken against a satisfactorily performing employee in the immediate aftermath of the employer's becoming aware of the employee's disability or protected activity, where adverse actions follow closely on the heels of protected activity, or where there's an evidence of a pattern of discriminatory or retaliatory conduct that began soon after the protected activity, and only culminated later in actual adverse action, you may consider the timing and sequence of those events in your analysis of whether Dr. Menninger has proven causation under either the federal or the Massachusetts causation standard.

Under both federal and state law, you may consider any legitimate, nondiscriminatory reason or explanation stated by PPD for any employment decision that you determine was an adverse action. You may assess whether the reasons stated were a pretext for discrimination or retaliation; that is, whether it was the true reason for the decision. Not all pretexts are necessarily designed or intended to conceal discrimination or retaliation, though that may be the purpose

the of a pretext. Regarding pretext, your focus is on PPD's state of mind, not on whether PPD's reason was, in your view, a good, foolish, or unprofessional business decision.

Remember that Dr. Menninger bears the burden to prove by a preponderance of the evidence that disability discrimination or retaliation was under federal law the but-for cause of the adverse action, and under Massachusetts law the determinative cause of the adverse action. Neither law requires her to prove that disability discrimination or retaliation was the only cause, though she must prove that it was the but-for cause under federal law or determinative cause under Massachusetts law.

And the reason here I refer to discrimination and retaliation is because you use the same causation instruction not only for this discrimination claim, but for the retaliation claim that I'm going to talk to you about in a minute. So that's why, even though it might seem a little confusing at first.

So a summary of the questions for Claim 2 are the following of what Dr. Menninger must prove:

One, did Dr. Menninger prove by a preponderance of the evidence she had a disability within the meaning of the anti-discrimination laws?

Two, did Dr. Menninger prove by preponderance of the evidence that she possessed the necessary skill,

experience, education, and other job-related requirements for the position of executive director for defendant's Global Central Labs?

Three, did Dr. Menninger prove by a preponderance of the evidence that she could have performed the essential functions of the executive director position, with or without reasonable accommodation?

Here, PPD bears the burden to prove by a preponderance of the evidence which functions of the executive director position were essential.

Four, did Dr. Menninger prove by preponderance of the evidence that PPD had knowledge of Dr. Menninger's alleged anxiety disorder at the time it took the alleged adverse employment action against her?

Five, did Dr. Menninger prove by a preponderance of the evidence that PPD took an adverse employment action against Dr. Menninger?

Six, causation. Under the federal law, did Dr. Menninger prove by a preponderance of the evidence that her disability was a but-for cause of the adverse employment action, and by Massachusetts law, did she prove by a preponderance of the evidence that her disability was a determinative cause of the adverse employment action?

If your answers to any one or more of Questions 1 to 5 and 6(a), that's the federal causation question, was

"no," then you must answer "no" to Question 2A on the verdict form. 2A is your verdict on the federal claim, Claim 2. If your answer to question -- and if your answers to Question 1 to 5 and 6(a) were all "yes," then you must answer "yes" to Question 2A on the verdict form.

Similarly, for 2B on the verdict form, which is the Massachusetts claim, if any one of more of your answers to these Questions 1 to 5 and 6(b) were "no," then you must answer "no" to Question 2B. But if your answers to questions 1 to 5 and 6(b) were all "yes," then you must answer "yes" to Question 2B.

So for the second claim, there's two questions on the verdict form, one for federal law and one for Massachusetts law.

Retaliation, the third claim. Dr. Menninger's third claim is that PPD retaliated against her for requesting an accommodation for a disability. A claim for retaliation is separate and distinct from a claim for discrimination. Accordingly, Dr. Menninger does not need to succeed under a discrimination claim in order to prove retaliation. In order to recover for retaliation, Dr. Menninger must prove all of the following by a preponderance of the evidence:

First, that she engaged in conduct that is protected under the anti-discrimination laws; second, that she suffered a materially adverse action; and third, that

there was a causal connection between the materially adverse action and Dr. Menninger's protected conduct.

Dr. Menninger must first prove she engaged in conduct that is protected under the law. An employee's request for accommodation constitutes protected conduct as a matter of law. This is true even if the employee does not meet the statutory definition of disability, or is otherwise not entitled to any accommodation, so long as the employee makes the request in good faith.

Element 2. Second, Dr. Menninger must prove she suffered a materially adverse action. For the purposes of this retaliation claim, Dr. Menninger alleges that the adverse action was comprised of one or more of the following alleged actions:

One, PPD tried to coerce her to quit; two, PPD tried to manufacture grounds for her termination; three, PPD refused to clarify the anticipated changes to her role; four, PPD established unrealistic expectations and goals for her role; five, PPD diminished her involvement in hiring and recruiting decisions which she alleges was a core component of her role; and six, PPD conducted a sham investigation into her complaints of mistreatment.

For this element, you must determine whether plaintiff has met her burden to prove by a preponderance of the evidence both that, (a), one or more of these alleged

acts occurred, and (b), if so, whether the proven acts amounted to an adverse action, either individually or collectively.

With respect to showing an adverse action, Dr. Menninger's burden under her retaliation claim is different than under her claim for discrimination. To be actionable as retaliation, an adverse action does not need to, quote, relate to the terms and conditions of employment, quote. Instead, Dr. Menninger need only prove that a reasonable employee would have found the challenged action materially adverse, which, in this context means it well might have dissuaded a reasonable worker from engaging in protected conduct. Material adversity is judged from the standpoint of a reasonable person in the employee's position, meaning a person with all of the same conditions as Dr. Menninger and in light of all the relevant circumstances.

In determining whether PPD subjected Dr. Menninger to a materially adverse action, you should consider all of the relevant evidence; that is, you should consider whether PPD's cumulative actions in response to her protected request for accommodation might well have dissuaded a reasonable person with her disabilities from requesting an accommodation.

Causation. Third, if you find that Dr. Menninger engaged in protected conduct and suffered a materially

adverse action, you must determine whether Dr. Menninger proved that protected conduct caused one or more of the actions that you found to be materially adverse.

Please refer to the explanation of causation provided under Claim 2, Element 4, including the explanation of the differing legal standards under federal and Massachusetts law. That same definition applies here; except that, instead of consideration whether her disability was a but-for and/or determinative clause as you did under Claim 2 above, here you must consider whether Dr. Menninger proved by a preponderance of the evidence that her alleged protected conduct was the but-for and/or determinative cause of any materially adverse actions that you found under this retaliation claim.

Here is a summary of the questions for the retaliation claim:

One, did Dr. Menninger prove by a preponderance of the evidence that she engaged in conduct that is protected under anti-discrimination law?

Two, did she prove by a preponderance of the evidence that she suffered a materially adverse action?

And three, causation under federal law, did she prove by preponderance of the evidence that her protected conduct was a but-for cause of at least one materially adverse action; or under Massachusetts law, did she prove by

a preponderance of the evidence that the protected conduct was a determinative cause of at least one adverse action.

If your answers to any one or more of these Questions 1, 2, and 3(a) was "no," then you must answer "no" to Question 3A on the verdict form.

Just as Claim 2 and Claim 3, there's two questions on your verdict form, one for federal claim, and one for the state law claim.

If your answers to Questions 1, 2, and 3(a) were all "yes," then you answer "yes" to Question 3A, which is the federal law question.

Similarly, for Question 3B, if your answers to Questions 1, 2, and 3(b), any one of them were "no," then you answer "no" to Question 3B. And if your answers to 1, 2, and 3(b) were all "yes," then you answer "yes" to 3B on the verdict form.

That brings me to damages. We're at 11:22. I'm done with most of the instructions, but there's a bit more to go. If you're game, I'll keep going and we'll just finish, and then we'll be done.

Does that sound fine?

THE JURORS: (Indicating affirmatively.)

THE COURT: Good. Okay. Great.

Damages. If you find that PPD discriminated against Dr. Menninger based on her disability or retaliated

against her for engaging in protected activities, then you must determine whether it has caused Dr. Menninger damages, and if so, you must determine the amount of those damages. In addition to proving her claims, except where I instruct you otherwise, she bears the burden to prove her damages by a preponderance of the evidence.

Uncertainty in the amount of damages does not bar recovery, and mathematical precision is not required. However, you must not speculate, conjecture, or guess in awarding damages. The award is acceptable, as long as it is based on just and reasonable inferences from the evidence. You will reach the damages issue only if you find that PPD is liable to Dr. Menninger for discrimination or retaliation or both.

The fact that I am instructing you on damages does not mean that I am attempting in any way to suggest to you what your verdict should be. Any suggestion from any of the lawyers in this case during opening or closing statements as to the value of this case or the amount of damages you should award is not evidence, and is not binding upon you in any way. If you award damages, you should do so in accordance with my instructions and based on your determination of an appropriate damage award.

The categories of damages that you may consider awarding to Dr. Menninger, if you find that PPD is liable to

Dr. Menninger, are as follows:

One, back pay; two, front pay; three, emotional distress; and four, punitive damages.

I will now instruct you as to each of these categories.

Back pay. If you determine that PPD discriminated against Dr. Menninger based on a disability, or retaliated against her for requesting an accommodation of a disability, then Dr. Menninger may be entitled to recover back pay, which is the amount of the lost salary, bonuses, equity, the value of employment benefits and health insurance benefits that Dr. Menninger would have received, but for PPD's discriminatory or retaliatory conduct, from the date of the adverse employment decision or the failure to provide a reasonable accommodation until today.

The plaintiff has a duty to limit or, quote/unquote, mitigate her damages by seeking other comparable employment. A comparable job is one that offers similar compensation, long-term benefits, opportunities for promotion, job responsibilities, working conditions, and status. However, if you find that Dr. Menninger was unable to mitigate her damages because PPD's discriminatory and/or retaliatory conduct caused her to be unable to perform comparable work, then so long as you find that to be the case, Dr. Menninger does not have a mitigation duty, and you

should not reduce her recovery for that period of time.

If and only if you find that some at point in time Dr. Menninger was able to perform comparable work, then it is still PPD's burden to prove to you that Dr. Menninger failed in her duty to mitigate damages by seeking other comparable employment. PPD meets this burden only if it is proven to you that:

One, one or more discoverable opportunities for comparable employment were available in a location at least as convenient as the place of former employment; two, Dr. Menninger unreasonably made no attempt to apply for any such job; and three, it was reasonably likely that Dr. Menninger would have obtained one of those comparable jobs.

The duty of mitigation does not require plaintiff to go into another line of work, accept a demotion, or take a demeaning position. If PPD has proven the three elements of mitigation that I have just read to you, then you should reduce any back pay awards to Dr. Menninger by the amount that PPD has proven that she could've earned in wages and benefits at the comparable job.

Please write the amount of back pay, if any, that you award to Dr. Menninger on Question 4A of the verdict form.

Front pay. If you determine that PPD discriminated

against Dr. Menninger based on a disability or retaliated against her for requesting accommodation of a disability, then you must also calculate separately, as future damages, a monetary amount equal to the present value of the wages and benefits that Dr. Menninger reasonably would have earned in the future in her employment with PPD, but for PPD's discrimination and/or retaliation against Dr. Menninger, minus the amount of wages and benefits that Dr. Menninger may reasonably be expected to earn in the future via other comparable employment.

You cannot speculate in awarding front pay. Rather, the determination of the amount of the award, if any, must be proven with reasonable certainty. In determining front pay, you should consider and weigh the following factors:

One, the availability of other comparable employment opportunities; two, Dr. Menninger's probable date of retirement or date of future employment; three, the amount of earnings, including salary and benefits, that Dr. Menninger probably would have received between now and her projected retirement date or date of future comparable employment; and four, the possibility of inflation and wage increases in the future.

If you award damage to Dr. Menninger for losses she will suffer in the future, keep in mind that the plaintiff

cannot be awarded damages that overcompensate the losses that she suffered because of the defendant's conduct. In order to avoid overpaying Dr. Menninger, you must consider that the amount of money you give her today for future losses can be put in the bank, where it can earn interest. So in making an award for future damages, you must determine the amount of money, that, if invested today at a reasonable rate of interest, would in the future provide Dr. Menninger with the amount of money that you calculated she will lose in the future as a result of PPD's conduct.

Please write the amount of front pay, if any, that you award to Dr. Menninger on Question 4B of the verdict form.

You have -- collateral sources. You have heard testimony that Dr. Menninger received compensation from sources such as short- or long-term disability insurance, Social Security Disability benefits, and unemployment insurance. These are considered, quote/unquote, collateral source payments under a principle called the collateral source rule. Ordinarily, under that rule, you do not deduct these collateral source payments from the amount of front or back pay that you decide to award to the plaintiff, unless you find that there are countervailing circumstances that would make it unjust to apply the collateral source rule. The mere fact that the plaintiff may receive a double

recovery is not alone enough to justify a deduct in the collateral source payments from the front or back pay award.

Emotional distress damages. Third, if you find that Dr. Menninger has been discriminated against, retaliated against, or both, you may also award her reasonable damages for her physical and emotional distress. Physical and emotional distress includes pain, discomfort, indignity, depression, fear, anxiety, or humiliation, suffered as a result of the discrimination, retaliation, or both. Although uncertainty in the amount of damages does not bar discovery and mathematical precision is not required, you must not speculate, conjecture, or guess in awarding damages.

To recover for physical and emotional distress, Dr. Menninger may, but is not required to, present evidence of physical injury or physical manifestation of her distress, nor is she required to show that she sought psychiatric consultation. That said, an award of emotional distress damages must rest on substantial evidence, and its factual basis must be made clear on the record. Some factor that is you should consider include, but are not limited to:

One, the nature and character of the alleged harm;

Two, the severity of the harm;

Three, the length of time that Dr. Menninger has suffered and reasonably expects to suffer;

And four, whether Dr. Menninger has attempted to

mitigate the harm, for example, by counseling or by taking medication.

In addition, Dr. Menninger must show a sufficient causal connection between PPD's unlawful acts and her emotional distress. Dr. Menninger is not entitled to compensation for any emotional distress or related symptoms which preexisted PPD's actions. She is entitled to full compensation for the full emotional distress that you find that PPD caused her, even if it is greater than what a reasonable person in her position would suffer, including exacerbation of preexisting symptoms.

In other words, she is entitled to full compensation for the increase in her anxiety, depression, or other distress that is caused by PPD's unlawful actions, even if you determine that an average person in her situation would not have experienced the same level of emotional stress. However, she is not entitled to compensation for emotional distress that arises from causes other than PPD's actions.

You may award Dr. Menninger damages for her emotional distress, even if you do not award back pay or front pay.

For emotional stress damages you award, if any, you will need to determine which portion arose up to and including today and which portion, if any, she is likely to

suffer in the future. Please write the amount of emotional distress damages, if any, that you award to Dr. Menninger for emotional stress she suffered up to today because of PPD's discrimination and/or retaliation on Question 4C of the verdict form.

Please write the amount of emotional distress damages, if any, that you award to Dr. Menninger for emotional distress that she is reasonably likely to suffer in the future because of PPD's discrimination and/or retaliation on Question 4D of the verdict form.

Punitive damages. Lastly, if you find that PPD has intentionally discriminated or retaliated against Dr. Menninger, or both, you may consider whether punitive damages are warranted. Punitive damages are different from compensatory damages. Unlike compensatory damages, which compensate the victim for the harm she has suffered, the purpose of punitive damages is to punish the defendant for conduct that is outrageous, because of the defendant's evil motive or reckless indifference to the rights of others.

To find that punitive damages should be awarded, you must find that more than intentional discrimination or retaliation occurred. Punitive damages may be awarded only where the defendant's conduct is outrageous or egregious.

Punitive damages may be awarded only when Dr. Menninger has proven by a preponderance of the evidence

that, one, the individual who engaged in the discriminatory act or practice was acting in a managerial capacity; two, he or she engaged in the discriminatory act or practice while acting in the scope of his or her employment; and three, that his or her conduct was not only intentional, but also was outrageous or egregious, or that he or she acted with malice or with reckless indifference to the rights of the disabled.

If Dr. Menninger has proved these facts, then you may award punitive damages, unless PPD proves by a preponderance of the evidence that the conduct or action by the managerial employee was contrary to its good-faith efforts to prevent discrimination in the workplace. In determining whether an employee of PPD was a supervisor or manager for PPD, you should consider the type of authority that he or she had over Dr. Menninger, and the type of authority for employment decisions PPD authorized him or her to make.

In determining the amount of a punitive damage award, if any, you should also consider:

One, the egregious or outrageous character or nature of PPD's conduct; PPD's wealth in order to determine what amount of money is needed to punish PPD's conduct, and to deter any future acts of discriminates or retaliation; three, the actual harm suffered by Dr. Menninger; four, the magnitude of any potential harm to other victims if similar

future behavior is not deterred; five, whether there was a conscious or purposeful effort to demean or diminish the class of which Dr. Menninger is a part, or if there was a conscious or purposeful effort to demean or diminish Dr. Menninger because she was a member of that class; six, whether PPD was aware that the discriminatory or retaliatory conduct would likely cause serious harm or recklessly disregarded the likelihood that serious harm would arise; seven, PPD's conduct after learning that the initial conduct would likely cause harm; and eight, the duration of the wrongful conduct and any concealment of that conduct by PPD.

If you do award punitive damages, you should fix the amount by using calm discretion and sound reason. Keep in mind that you're not required to award punitive damages. The amount of the award must not reflect bias, prejudice, or sympathy toward any party, but the amount can be as large as you believe necessary to fulfill the purpose of punitive damages.

If you find punitive damages are warranted against PPD, please answer yes to Question 4E on the verdict form, and then write the amount of punitive damages you award to Dr. Menninger in Question 4F. If you find that punitive damages are not warranted against PPD, please answer no to Question 4E on the verdict form, and skip Question 4F.

So lastly, with respect to your deliberations, it's

almost time for you to begin those deliberations.

Here are a few words about that.

Each of you brings to your jury service your life experiences and knowledge. This serves only as a background for your common sense and judgment. In rendering your verdict, you must consider only and decide the case solely upon the evidence you heard in court in light of my instructions. Each of you must decide the case for yourself, but you should do so only after considering all of the evidence and listening to the views of your fellow jurors. Do not be afraid to change your opinion if you think that you are wrong after hearing the opinions of your fellow jurors, but do not come to a decision simply because other jurors insist that it is right, and do not surrender an honest belief about the weight and effect of the evidence simply in order to reach a verdict.

The case has taken a great deal of time and effort to prepare and to try. There is no reason to think that it could have been better tried, or that another jury would be better qualified than you are to decide it. It is important, therefore, that you reach a verdict if you can do so conscientiously. Your verdict must be unanimous as to each of the special questions on the verdict form that I am going to ask you to answer. Your answers will be recorded on the verdict slip by your foreperson. The fact that one of you is

the foreperson does not give that person special status in your deliberations. You are all equal.

Your first order of business will be to select a foreperson. The foreperson will have the same voice and the same vote as the other deliberating jurors. The foreperson will act as the moderator of the discussion and will serve as the jury's spokesperson. The foreperson's most important obligation is to ensure that any juror who wishes to be heard on any material issue has a full and fair opportunity to be heard by his or her fellow jurors. When the jury has reached a verdict, the foreperson will fill in the appropriate answers, sign and date the verdict slip, and inform the court officer that the jury is read to return to the courtroom.

Whenever you need a recess for any purpose, your foreperson may declare a recess. Do not discuss the case during a recess. All of your discussions of the case should occur only when you're all together, and your foreperson has indicated that deliberations may proceed.

If it becomes necessary during your deliberations to communicate with me, you may do so by sending a note through the court officer. The note must be signed by your foreperson. No member of the jury should ever attempt to communicate with me, except by such a signed writing. However, in doing so, do not tell me how you stand, either numerically or otherwise, on any issue before you, until you

have reached a verdict.

On matters touching simply on the arrangements for your meals, schedule, and convenience, you are free to communicate with the court officer or Ms. Belmont orally, rather than in writing. You are not to communicate with anyone but me about the case, however, and then only in writing.

When you have reached your verdict, your foreperson should fill in, date, and sign the verdict slip to state the verdict upon which you all agree. You will then return with your verdict to the courtroom. Your verdict must be unanimous; that is, you must be unanimous as to each of the answers that you answer on the jury form.

Let me pause here. That is the end of my instructions to you. I need to talk briefly to the lawyers at sidebar for a moment before you retire to the jury room. And let me explain, just logistically, one last point about the exhibits, and the like.

So when you return to the jury room --

Is it already all set, Kellyann?

THE DEPUTY CLERK: No.

THE COURT: How long do you think it will be? He's having a problem?

THE DEPUTY CLERK: Ten to 15.

THE COURT: So when you retire to the jury room, in

a minute or two, you're actually not going to be able to start your deliberations yet. Let me tell you why, because you're not going to have the evidence yet. You're going to have the verdict form; you're going to have the instructions that I just read to you; but the exhibits aren't going to be ready for you. Let me tell you why.

The answer is this: We have a digital system. You've seen that TV in there? You probably might have wanted to watch like Comcast or who knows what, and you discovered that it doesn't do that. It's not connected to the Internet. There's no YouTube. There's no cable TV. It's an internal system. And we can load, just like you've seen in court, all of the exhibits, we can load the exhibits onto that. Ms. Belmont is doing that.

Ordinarily, Ms. Belmont has it already all done before now. But there's been a little, today, snafu with the technical system. As you haven't already figured out, while we have a lot of resources, we're not Microsoft, Amazon, or Google. So we're working on that. We think in ten minutes, or so, we'll have it.

Once we have them, you'll have a remote. Ms. Belmont will show you how to use it, and you'll be able to see, call up on the screen all the exhibits. You'll also have a printed index to all the exhibits. There are a lot of exhibits in this case. You've seen a lot of them, but there

is also more than the ones you've seen.

A couple cautions about this: One, the numbers mean nothing. I think I told you that during the trial. There is no significance to the numbers that -- don't draw any conclusions. Don't draw any conclusions because there could be blank numbers. There could be missing numbers. It could be 100 to 110. It doesn't mean anything. There are lots of different reasons throughout the case and different purposes, and they're not renumbered now because that would make life too difficult for the lawyers. So don't draw any conclusions about that.

All right. I think that's all I have for you. I'll see counsel at sidebar.

(The following discussion held at the bench.)

THE COURT: Anything for you, Mr. Hannon?

MR. HANNON: Just one clarification. And this was right here at the top of 26.

THE COURT: What page?

MR. HANNON: Page 26. It's a little unclear in terms of which questions you're referring to.

THE COURT: Oh.

MR. HANNON: So -- because this actually, oddly, corresponds to what's on the verdict slip, as well. So I think you mean "Questions 1, 2, and 3(a) above." So you say that everywhere else, you just didn't say it here. I'm fine

simply making the notation on the copy that goes back with the jury.

THE COURT: Okay. And then here (indicating).

MR. HANNON: Yes. Yup.

THE COURT: I'm going to print eleven more copies, and we'll put that word in the printed copies.

All right. That's it for you?

MR. HANNON: That's it for me.

THE COURT: Anything for you?

MR. CURRAN: Nothing.

MS. MANDEL: No.

THE COURT: Okay.

(Bench conference concluded.)

THE COURT: So two more minor things. One, you'll notice on page 26, there's a handwritten word I've just written in. It's not a substantive word. It's just a slight clarification for you. I don't think I need to explain it to you, it will be more than obvious to all of you what it means. And you'll have this copy in the jury room.

We are going to print eleven more copies. That's my practice. I don't wait -- the reason that I don't have them right now is I wait until the very end, because sometimes, like this correction that the lawyers have pointed out to me about this one word that's just, like, clarification. So we'll print the eleven copies now. The

printed eleven copies won't have the handwritten, because they'll have it typed in. So that will be different. It's not significant, just so you know. And the eleven copies will come shortly.

How are we doing?

THE DEPUTY CLERK: I actually need to go downstairs to do it.

THE COURT: So what's going to happen is Ms. Belmont will take you back to the jury room, she has to go downstairs because this computer is not working to create the electronic copy that goes to that system. And so -- but once she brings you in, she'll go down and she'll do that, and she'll be back and once it's ready and give you that.

You're not going to have paper copies of the exhibits, because there were too many to print. Okay?

All rise for the jury. Thank you for your attention.

(The jury exits the courtroom.)

THE COURT: Have you all given your contact information to Ms. Belmont?

MR. HANNON: We have.

THE COURT: All right. So you're all set.

MR. CURRAN: We have.

THE COURT: Okay. So I'll let you know when there's a question, and if for some reason this -- loading

the documents on to the system turns into some bigger problem that -- electronically, I don't know quite what the issue is, but if it isn't resolved in 10 or 15 minutes, Ms. Belmont will let you know and we'll figure out what to do.

MR. HANNON: Okay. And you want us within five minutes?

THE COURT: Five -- well, five is great, if you can do five. If you're offering five, accepted. I'm surprised you offered that --

MR. HANNON: It wasn't an offer, Your Honor.

THE COURT: I think that was an offer.

MR. HANNON: It wasn't an offer.

THE COURT: Was that not an offer and acceptance counsel?

MR. CURRAN: We're going to stay here.

MS. MANDEL: We'll be here.

THE COURT: So I'm surprised, Mr. Hannon, you'd make that offer, because, you know, have you read this book called *Never Split the Difference.*

MR. HANNON: I haven't, no.

THE COURT: It's written by the retired FBI's lead hostage negotiator, and never split the difference comes from -- he says when I'm negotiating to release people and they have four hostages, he can't say, you know, you can kill two and I'll take two. His answer is I want all four, plus

you. So it's all about how to negotiate with people. He would tell you, don't start with five minutes, when what you want is 15. So five is great, but a little more than five, I know it -- but not like a half hour.

MR. HANNON: Okay.

THE COURT: Because as soon as they get it -- as soon as we get it, I'll want to hear from all of you.

MR. HANNON: Understood.

THE COURT: So I have -- I know the case is not over, but I had -- I'm fine to say something to all of you about a couple of things, since I'm not the finder of fact, that I don't think bears on any possible post-trial motions or appeals, recognizing that at least one of you will be unhappy -- well, there's a reasonable likelihood that one of you would be unhappy, potentially both of you are unhappy. In my experience, oftentimes when people leave the courtroom and I decide things, I've left everybody unhappy. But if you want me to -- if you're okay with that, I'll do that. If you want me to do it on the record, I'll do it on the record. If you're comfortable with me doing it off the record, I'll do it off the record.

MR. HANNON: No difference here, Your Honor.

MS. MANDEL: No difference here, as well.

THE COURT: So you can be seated. So I think I would prefer to do it just for the six of you at sidebar.

I'll do it off the record, and then if you want to put anything on the record afterwards, or something, we could.

(Discussion held off the record.)

THE COURT: I just want to say, I had an off-the-record discussion with both counsel and their clients. Both counsel, as I understand it, agreed to go off the record and were comfortable going off the record. What I explained off the record was just sort of some compliments with respect to counsel's performance and their closing arguments. I made some personal comments to Dr. Menninger with respect to my hope for her ability to be able to get better. I made some comments to Dr. Menninger and Ms. Ballweg with respect to sort of how the system of justice works and how it can be hard for people, even though we're not intending it to be hard for them. And some suggestions, irrespective of the verdict, which I have no view on, as to -- at the moment, as to PPD one way to learn from this is try to look back and try to learn from experiences.

And does any of you want to add anything to the record regarding what happened off the record?

MR. HANNON: Nothing here, thank you.

MS. MANDEL: Nothing here, thank you.

THE COURT: All right. Fine. That's it. Thank you.

(Court in recess at 11:55 a.m.

and reconvened at 3:23 p.m.)

VERDICT

THE COURT: So we have a verdict, I understand.

So, Kellyann, go get the jury.

Do you need to wait for Ms. Ballweg or no?

MS. MANDEL: No. She had to get on her flight home, so --

THE COURT: Okay.

(Pause in proceedings.)

(Jury present.)

THE COURT: Ladies and gentlemen, I understand you have a verdict. All right.

JUROR: Yes.

THE COURT: Okay. Ms. Belmont, if you would get the verdict form.

Careful.

Okay.

THE DEPUTY CLERK: Ladies and gentlemen of the jury, please listen to the verdict as it is recorded.

In the matter of Lisa Menninger v. PPD Development, L.P., Civil Action Number 19-11441:

Question 1: Discrimination -- Failure to Provide Reasonable Accommodation Claim.

Question 1: Did Dr. Menninger prove by a preponderance of the evidence that PPD unlawfully

discriminated against her by failing to provide her with a reasonable accommodation?

Yes.

Question 2: Discrimination -- Disparate Treatment/Adverse Employment Claim.

Question 2A: Did Dr. Menninger prove by a preponderance of the evidence that PPD unlawfully discriminated against her by taking an adverse employment action against her under federal law (applying the federal "but-for" causation standard)?

Yes.

Question 2B: Did Dr. Menninger prove by a preponderance of the evidence that PPD unlawfully discriminated against her by taking an adverse employment action against her under Massachusetts law (applying the Massachusetts "determinative cause" causation standard)?

Yes.

Question 3: Retaliation Claim.

Question 3A: Did Dr. Menninger prove by a preponderance of the evidence that PPD unlawfully retaliated against her under federal law (applying the federal "but-for" causation standard)?

Yes.

Question 3B: Did Dr. Menninger prove by a preponderance of the evidence that PPD unlawfully retaliated

against her under Massachusetts law (applying the Massachusetts "determinative cause" causation standard)?

Yes.

Question 4: Damages.

Question 4A: Enter below the amount of "back pay," if any, that Dr. Menninger proved by a preponderance of the evidence that she lost because of PPD's disability discrimination and/or retaliation.

1,565,000.

Question B: Enter below the amount of "front pay," if any, that Dr. Menninger proved by a preponderance of the evidence that she will lose because of PPD's disability discrimination and/or retaliation.

$5,465,000.

Question 4C: Enter below the amount of damages for emotional distress, if any, that Dr. Menninger proved by a preponderance of the evidence that she suffered up to today because of PPD's disability discrimination and/or retaliation.

$5 million.

Question 4D: Enter below the amount of damages for emotional distress, if any, that Dr. Menninger proved by a preponderance of the evidence that she is reasonably likely to suffer in the future because of PPD's disability discrimination and/or retaliation.

$2 million.

Question 4E: Do you find that punitive damages are warranted against PPD?

Yes.

Question 4F: Enter below the amount of punitive damages that you award to Dr. Menninger.

$10 million.

Signed by the foreperson and dated March 31, 2023.

So say you, Mr. Foreperson?

JUROR: Yes.

THE DEPUTY CLERK: So say you all members of the jury?

THE JURY: Yes.

THE COURT: Ms. Mandel, do you wish the jury be polled?

MS. MANDEL: Yes, Your Honor.

THE COURT: All right. Ms. Belmont, if you would poll the jury.

THE DEPUTY CLERK: So, ladies and gentlemen of the jury, please listen for your juror number. When it is called, please indicate whether you agree with the verdict as it has been recorded.

Juror Number 2.

JUROR: Yes.

THE DEPUTY CLERK: Juror Number 35.

JUROR: Yes.
THE DEPUTY CLERK: Juror Number 30.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 7.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 32.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 12.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 33.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 34.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 16.
JUROR: Yes.
THE DEPUTY CLERK: Juror Number 24.
JUROR: Yes.
THE DEPUTY CLERK: And Juror Number 27.
JUROR: Yes.
THE COURT: All right. Do either of you have any business which you think we need to do with the jury?
MR. HANNON: Nothing here, Your Honor.
MS. MANDEL: No, Your Honor.
THE COURT: All right. Ladies and gentlemen of the jury, thank you very much for your service. Thank you very

much for your time and your attention during these two weeks. You are now discharged from jury service, and you're free to go. You are free from my instructions to you of don't discuss the case, obviously, among yourselves or with anyone else. You can do that.

I do have one suggestion, one request. The suggestion is that you -- simply, the conversations that you all had among yourselves in the jury room, you -- that's for your own decision as what to do about them, but I suggest to people that they keep that among themselves, that there's -- that's just -- you don't have to. There's no court rule that says you can't.

The lawyers are not allowed to talk to you about it without my permission, but -- which they haven't asked and I haven't given. But you're not limited from talking about it; on the other hand, I suggest you respect sort of each other in terms of the joint decision you came to.

And then the request I have is simply, while you're done with me, you're free of me and any of my directions or instructions, my request is you wait a few minutes. I have a minute or two with the lawyers, and then I will come back, and I just like to thank jurors personally for the time and service that you've rendered.

And now, though you're no longer a jury, nonetheless, out of respect for your service and your

verdict, we all rise for the jury.

(Jury not present.)

THE COURT: Two things -- one, anything else to be addressed before we stand in recess?

MR. HANNON: Just in terms of timing for an application for attorney's fees, we -- there could be a judgment first and then the application and then an amended judgment with the attorney's fees, or do you want to hold on the judgment while we do the application for attorney's fees?

THE COURT: I don't care. I could enter a final judgment on Monday that had the -- the verdict, we'll enter today. The final judgment, there's more claims in the case than were resolved by the jury, so the final would encompass the jury's verdict plus the other claims that I ruled out at summary judgment, if I ruled the claims out or just issues, but whatever.

And then -- so I'm indifferent. I'm happy to wait, do the application for fees, and then include that, or I could do an amended, whatever you prefer.

MR. HANNON: I think it would be easier just to wait for the fees, but --

THE COURT: Fine. So we'll enter the verdict, but we won't enter judgment. So you-all set a date when you want to file your motion.

MR. HANNON: Ten days?

THE COURT: Fine. No problem.

MR. HANNON: I'm a terrible negotiator.

THE COURT: I don't believe that, but -- but nonetheless, if you want more --

MR. HANNON: No. Ten days is good, Your Honor. Thank you.

THE COURT: Fine. I'll say two weeks to respond, and if you need more time, then you can.

Is there anything else to address at the moment?

MS. MANDEL: Not at the moment.

THE COURT: All right. Fine.

I -- it's my practice to go back and thank the jurors and to ask them if they have suggestions in two ways. I don't talk to them about their decision. I tell them I meant what I said. I'm really not interested -- it's their verdict and for them to decide. I do ask them if they have suggestions for us and suggestions for lawyers.

If I hear anything, if you stick around, I'm happy to share what they said with you, but you don't have to stick around. It's up to you, and I won't tell them whether you stick around or not. I just tell you that so, if you want to, you can wait and I'll come back.

I meant what I said at sidebar, I thought -- what I told you all before the verdict. I told you before, I had no idea what they would do, and I often don't; but in any event,

that's where it stands.

Is there anything else?

MR. HANNON: Nothing here, Your Honor.

MS. MANDEL: Nothing here.

THE COURT: All right. Should I come back out or not? I'll only come back out if you're going to wait.

MR. HANNON: I'll wait, Your Honor.

MR. CURRAN: We'll wait, Your Honor.

THE COURT: Fine. I'll be back in a few.

(Court in recess at 3:36 p.m.)

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Rachel M. Lopez — March 28, 2023

/s/ Robert W. Paschal

_____ _____

Rachel M. Lopez, CRR — Date

Robert W. Paschal, CRR, RMR

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